NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TAXATION COMMITTEE

Wednesday, November 28, 2007
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Bob Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Bob Stenehjem, Dwight Cook, Constance Triplett, Herbert Urlacher; Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Glen Froseth, Craig Headland, Gil Herbel, Jim Kasper, Arlo Schmidt, Benjamin A. Vig, Dave Weiler, Dwight Wrangham

Members absent: Senator Ben Tollefson; Representatives Scot Kelsh, Mark S. Owens

Others present: See Appendix A

It was moved by Representative Belter, seconded by Representative Drovdal, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

POLITICAL SUBDIVISION INDEBTEDNESS

Chairman Stenehjem called on Mr. Maurice Cook, Cook, Wegner, & Wike PLLP, for a presentation of information regarding the types of indebtedness that may be incurred by political subdivisions. A copy of Mr. Cook's prepared testimony is attached as Appendix B.

Senator Cook asked how legislators can get a handle on indebtedness of political subdivisions. Mr. Cook said political subdivisions are subject to audit so audit reports for political subdivisions could be reviewed.

Representative Kasper inquired about the legal status of appropriation debt and whether it is authorized by law. Mr. Cook said appropriation debt for installment purposes is not specifically authorized or prohibited by state law. He said legal analysis has concluded that if a political subdivision has the authority to make a purchase, it has the implied power to do so on an installment basis. He said installment payments are subject to annual appropriation so appropriation debt is not considered indebtedness subject to debt limits that apply to political subdivisions.

Representative Kasper asked how building authorities are authorized by law to issue bonds for building projects and avoid the requirement of voter approval that would apply to bonding by a school district. Mr. Cook said there is no specific statutory authority for a building authority for a school district. He said a building authority is established to issue bonds and use the funds to build a school building, which is then leased to a school district. He said the school district is limited by law to leasing a building for no more than one year at a time. He said there is acceptance in the bond market that the school will renew the lease from year-to-year. He said another issue with building authority building of school district buildings is that the Superintendent of Public Instruction is not required to approve the building as it would be if a bond issue for the building was made by the school district. In response to another question from Representative Kasper, Mr. Cook said if school district general obligation bonds are approved and issued, an excess levy is imposed to make bond payments. He said in the case of a building authority bond issue and leasing arrangement, the school district must have available revenue in its general fund for the lease payments because there is no statutory authority for an excess levy for such bond payments.

Representative Bellew asked whether there are no limits to what a political subdivision may impose in special assessments. He said the reason for the question is that a park board member in Minot expressed the opinion that there is no limit to how much the park board is allowed to impose in special assessments. Mr. Cook said an improvement within a park district may be funded through establishment of a special assessment district. He said the law allows a political subdivision to add an excess levy to cover the costs of special assessment improvements. He said there is no legal limit and the only actual limit would be public opinion.

Senator Cook asked whether bonding companies look at cities' indebtedness levels and ability to pay in determining interest rates for bonds. Mr. Cook said bonding companies look at those issues and also examine overlapping debt from other political subdivisions that impacts taxpayers.

Senator Cook asked if city taxpayers are paying more bonded indebtedness than property taxes whether that would raise a concern for bonding companies. Mr. Cook said bonding companies examine indebtedness levels and examine whether bond issuance is in compliance with law. Senator Cook said he is concerned about debt levels of political subdivisions and the fact that only general obligation indebtedness is limited by constitutional provisions. He asked whether the Legislative Assembly should be concerned with other types of indebtedness. Mr. Cook said state law provides options for political subdivisions in funding operations and setting tax policy. He said political subdivisions have options of funding projects through general fund revenues, special assessments, indebtedness, or other methods. He said the city of Fargo uses a significant level of tax increment financing for some projects. He said the options available to political subdivisions have been provided by law, which makes them a matter of legislative interest.

Representative Boucher asked whether use of renaissance zone property tax exemptions would negate the use of a tax increment financing district because incremental value of properties would produce no tax revenue to pay the tax incrementing financing bonds. Mr. Cook said it is hard to see how those two development options could work together.

Committee counsel said committee members have expressed interest in establishing a central collection point for information on indebtedness of political subdivisions. He asked whether Mr. Cook sees any benefit to having that information. Mr. Cook said the Public Finance Authority buys bonds of political subdivisions and reviews debt information in making determinations on bonding projects. He said if the Public Finance Authority ever comes up short, the Legislative Assembly could have a moral obligation to cover the shortage. He said there is scrutiny of each bond issue so he is not sure what would be gained by gathering the information.

Representative Kasper asked whether there could be statutory language to prohibit a building authority from issuing bonds for buildings to be leased to political subdivisions. Mr. Cook said he does not see any reason why that would not be allowed. He said Minnesota has authorizing legislation for building authorities with built-in limitations.

Senator Cook said he has concerns that special assessment debt, revenue debt, and other types of indebtedness may become excessive and turn into general obligation debt. He said lack of information on indebtedness levels is his reason for concern with collecting information on indebtedness. He said consideration should be given to whether there are things the Legislative Assembly could do to limit the possibility of a political subdivision becoming overwhelmed by indebtedness.

INCOME TAX STUDY

Chairman Stenehjem called on committee counsel for presentation of a bill draft [90018.0100] to eliminate the optional long-form, individual, estate, and trust income tax return. Committee counsel said the bill draft would eliminate the use of Form ND-2 and remove references in current law to the form. He said the bill draft does not transfer any credits or deductions from Form ND-2 to Form ND-1. He said the committee has discussed the possibility of adjusting the ND-1 form rates but the bill draft does not make any changes in those rates. He said the Tax Department has not had the opportunity to review the bill draft and should be given that opportunity.

Representative Belter asked if the bill draft is similar to the 2005 legislation that would have eliminated the use of Form ND-2. Committee counsel said the bill draft is very similar but differs because some of the statutory provisions have been amended since 2005.

Representative Herbel said an initiative petition is being circulated that would reduce income tax rates by 50 percent. He asked how passage of that measure would affect Form ND-2. Committee counsel said if the initiated measure appears on the ballot and is approved by the voters, the rate reduction for Form ND-1 is so substantial that it would eliminate any possible benefit of using Form ND-2 for any taxpayer. He said if that occurs, the bill draft should be enacted to clean up obsolete references to Form ND-2.

PROPERTY TAX RELIEF STUDY

Chairman Stenehjem called on Ms. Donita Wald, legal counsel, Tax Department, for testimony relating to implementation of the property tax relief credits provided by 2007 Senate Bill No. 2032.

Ms. Wald distributed copies of a pamphlet providing answers to frequently asked questions regarding the income tax credit, a chart to illustrate determination of the residential and agricultural property income tax credit, and a chart to illustrate determination of the commercial property income tax credit. Copies of these items are attached as Appendices C, D, and E, respectively.

Ms. Wald said the Tax Department established four separate teams to address different aspects of administration of the property tax relief credits. She said the Tax Department worked with county officials on implementation of excess income tax credits being used as a credit against future property tax liability. She said it is hoped that the procedure developed will be simple and efficient for the Tax Department and counties.

Ms. Wald said the Tax Commissioner's web site has additional information regarding the property tax relief credits. She said the Tax Department has provided informational articles to the AARP, tax practitioners in the state, and other interested parties to make taxpayers aware of the property tax relief credit. She said the Tax Department will be appearing at forums in several locations in the state to provide information to the public on the tax credits.

Ms. Wald said the Tax Department has developed a system for electronic verification of property tax credit certificates with assistance from counties. She said using the electronic system will allow payments to be made to counties within four to eight days.

Ms. Wald said the request for information on the property tax credit implementation asked for identification of any issues that might improve implementation of the program if it is reenacted in the future. She said the Tax Department would like to defer discussion of that question until a year of experience has been gained.

Representative Froseth said he heard that counties may be forced to absorb substantial software costs to implement the property tax relief program. Ms. Wald said most counties work with one of several software vendors doing business in the state. She said the Tax Department created a program that could be incorporated in software packages of these vendors and the cost to counties for this software should be minimal.

Representative Drovdal asked how the property tax relief credit will be claimed and verified. Ms. Wald said taxpayers are entitled of up to 10 percent of property taxes based on 2006 property taxes, payable in 2007. She said it does not matter whether the taxes are paid in 2006 or in 2007 but the taxes must have been paid before the credit is claimed. She said the taxpayer must show the parcel number and county of the property and provide evidence the tax was paid. She said the parcel number of the property is unique so the Tax Department will be able to verify claims for income tax credits by cross-checking information with counties.

Representative Drovdal asked if a father pays property taxes on land owned by a son, who would receive the credit. Ms. Wald said the credit is available to the owner of the property and if the owner and other parties share payment of taxes, they have to work out the financial arrangements for sharing the benefit of the credit among themselves.

Representative Weiler asked what will happen if taxpayers are unaware of the income tax credit. Ms. Wald said the Tax Department is doing what it can to provide information to make the public aware of the income tax credits. She said taxpayers will see the credits on income tax forms and instructions.

Representative Kasper asked who is entitled to a credit that would be available to an individual who died during the taxable year. Ms. Wald said if the individual had income and property tax liability, the personal representative will have to file an income tax return and the credit would be allowed on that return.

Representative Mueller asked how delinquent property taxes would be treated for purposes of the income tax credit. Ms. Wald said unpaid property taxes are not eligible for the income tax credit.

Representative Headland asked if a corporation could pay property taxes and receive a corporate income tax credit and another one would be available for individuals who are shareholders in the corporation. Ms. Wald said a corporation is eligible for a corporate income tax credit only for property taxes on commercial property. She said if an individual tries to claim the same tax payments, the system will not allow the credit. Representative Headland asked how this would apply to corporate farming. Ms. Wald said a corporation is not eligible for a credit on agricultural land. She said a corporation is eligible only for a credit for taxes on commercial property.

Senator Stenehjem asked how property tax certificates will be administered for individuals who might own property in several counties. Ms. Wald said if you own property in multiple counties, you can obtain one certificate for all of those properties and take that certificate to any one of the counties in which the property is located to redeem the certificate.

Senator Triplett asked how many people should be expected to be eligible for certificates to apply against property tax liability. Ms. Wald said it was estimated during consideration of the legislation in the 2007 legislative session that 8,800 individuals would be eligible and there may be more than that number who actually are eligible.

Chairman Stenehjem called on Ms. Kathy Strombeck, Research Analyst, Tax Department, for information on cost-savings to the Tax Department if Form ND-2 is eliminated. Ms. Strombeck said it is estimated that eliminating Form ND-2 would result in savings to the Tax Department of $25,000 per year. She said there would be an additional savings to taxpayers in an unknown amount from reduced payments to tax preparers who will no longer have to prepare Form ND-2 for comparison to Form ND-1.

Ms. Strombeck said she was also requested to provide information showing the effect on income tax rates of a 10 percent rate reduction and a 10 percent rate reduction combined with a reduction to reflect the revenue savings from eliminating Form ND-2. She provided a table showing the effects on rates. A copy of the table is attached as Appendix F.

Representative Drovdal said he recalls it was reported that 7,000 taxpayers file income tax returns on Form ND-2. He asked how many of those taxpayers are nonresidents. Ms. Strombeck said 5,000 of the 7,000 Form ND-2 filers are nonresidents.

Mr. Cory Fong, Tax Commissioner, said the Tax Department will be e-mailing all legislators to provide information on the property tax relief credits. He said the information is being provided so legislators can answer questions from constituents and provide information.

Ms. Strombeck said the Tax Department was requested to provide tax burden comparisons to illustrate how North Dakota tax burdens compare with tax burdens in other states. A copy of tax burden comparisons she distributed is attached as Appendix G. She said the tax burden comparison prepared each year by the government of the District of Columbia is one of the most reliable comparisons done in the nation. She said the study illustrates burden of major taxes by tax types for a hypothetical family of three at various income levels. She said the comparison shows that only Montana has a lower tax burden than North Dakota for a family with $25,000 income. She said at $50,000 income, North Dakota ranks 41 of 51 jurisdictions, at $75,000 income, North Dakota ranks 44 of 51 jurisdictions, at $100,000 income, North Dakota ranks 43 of 51 jurisdictions, and at $150,000 income, North Dakota ranks 43 of 51 jurisdictions. She said the information includes a chart of state and local general sales tax rates and shows a 1.5 percent local sales tax in Fargo, which is now a 1 percent tax. She said the information contains a table showing gasoline tax rates and cigarette tax rates. She said the information also includes a portion of the 50-state property tax comparison study compiled by the member states of the National Taxpayer Conference. She said the information she provided also includes rankings of state tax collections per capita and based on personal income as prepared by the United States Census Bureau. She said the overall conclusion from reviewing tax burden comparisons is that North Dakota ranks low in income tax burden, moderate in sales tax burden, and slightly high in property tax burden.

Senator Cook asked whether sales tax burden comparisons are based on sales tax rates and do not include consideration of the sales tax base. Ms. Strombeck said the Washington, D.C., study includes consideration of the sales tax base but some studies are based only on sales tax rate comparisons.

Representative Weiler said as a realtor, he has observed that many property buyers who came from out of state are sometimes shocked by high property taxes in North Dakota. He said these people are even more surprised when they are informed of the balance of special assessments against property. He said people coming from other states are not familiar with special assessments. He asked whether property tax burden comparisons include any consideration of special assessments. Ms. Strombeck said she does not think special assessments are included in property tax comparisons of organizations.

Chairman Stenehjem called on Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, for a presentation of information on property tax issues. A copy of Ms. Dickerson's testimony is attached as Appendix H.

Ms. Dickerson said she was requested to explore the share of increased residential property tax collections attributable to new property and share attributable to valuation increases in each county. She explained how she analyzed available data and said the table shows the percentage of residential property valuation increase attributable to new property for each county. She said the percentages for some counties appear out of line. She said some counties show a greater net amount of new residential property than the county total change in residential property value. She said the reason would be a reduction in existing residential property valuations.

Ms. Dickerson said the result of the analysis shows that, on a statewide basis, 36 percent of the increase in residential property valuation is due to new property for 2007 assessments. Applying these percentages to 2007 taxes levied, she said, the statewide average mill rate decreased by 1 percent from 2006 to 2007 but total residential property taxes levied increased by 8.4 percent. She said of the 9.4 percent tax increase that would have occurred without the mill rate reduction, approximately 3.4 percent was due to new property and 6 percent was due to increased valuation of existing residential property.

Ms. Dickerson said she was also requested to address a question relating to how many states provide state-level property assessments for all property and the advantages and disadvantages of state-level assessments. She said of the 50 states and the District of Columbia, only Maryland, Montana, and the District of Columbia assess real property at the state level. She said 26 states have county-level assessment, 18 states (including North Dakota) have local assessment, and 4 states have a combination of county and local assessments. She said states that impose property taxes on railroad and public utility property, including North Dakota, generally assess that property at the state level.

Ms. Dickerson said state assessment of all property promotes uniformity of assessments. She said state technology and human resources are often superior to those of local jurisdictions. She said state-level assessment may prevent inequities caused by personal relationships of local assessment officials and appeals boards and property owners. She said the main objection to state-level assessment of property is a perceived loss of local control. She said there are also concerns that local market conditions are not sufficiently considered when "outsiders" establish valuation. She said people often feel that no one else knows conditions in their area as well as they do.

Representative Kasper asked Ms. Dickerson to review the procedures for a property owner to challenge an assessment. Ms. Dickerson said there are two separate processes for challenging an assessment. She said the informal process involves a challenge through the board of equalization. She said the first step for a taxpayer dissatisfied with an assessment is to talk to the assessor. She said if a taxpayer is still dissatisfied after discussing the issue with the assessor, the taxpayer has options to appeal the assessment to the township or city board of equalization for consideration at meetings in April and to further appeal assessments for consideration by the county board of equalization at its meetings in June and the State Board of Equalization at its meeting in August. She said the formal appeal process involves filing an application for abatement of property taxes with the county auditor after valuations have been finalized, which occurs at the time of the meeting of the State Board of Equalization. She said when an application for abatement is filed, the city or township makes a recommendation to the county board of equalization. She said the county board of equalization holds a hearing on the application for abatement and the petitioner has the right to appear and argue the case. She said the county board of equalization must make a decision to grant or deny the application for abatement and must provide written findings of its decision. She said a taxpayer dissatisfied with the decision of the county board of equalization may appeal that decision to the district court.

Representative Herbel said the committee has reviewed a graph showing a comparison of property taxes paid by different classifications of property. He said the residential and agricultural property taxes comparison would be useful information if the residential property information in the graph was adjusted to reflect valuation increases of property but not new property values. He said this would allow comparison of tax growth for existing properties. Ms. Dickerson said it should be possible to adjust the information in the graph presented for committee consideration at an earlier meeting, with the clarification that the residential property tax increase data is for valuation increases only and not for new residential property.

Senator Urlacher asked whether agricultural property valuations are expected to increase as a result of higher agricultural commodity prices. Ms. Dickerson said she would expect that higher commodity prices would result in higher valuations because commodity prices are a significant part of the agricultural property valuation formula but there are other components in the formula that may have a limiting effect.

Senator Cook said Ms. Dickerson provided a good explanation of the issues involved in state-level or local-level assessments. He asked for a review of Ms. Dickerson's authority, as state supervisor of assessments, over local assessment decisions. Ms. Dickerson said the state supervisor of assessments has authority to supervise training and certification of local assessors and to provide written standards for assessments. She said the state supervisor of assessments has no control over assessment decisions of local governing bodies. Senator Cook asked whether Ms. Dickerson examined how states control local assessors in other states. Ms. Dickerson said other states have the same conditions as North Dakota, providing training and licensing for assessors but having no control over local government decisions.

Chairman Stenehjem called on Ms. Sara Hewson, Property Tax Specialist, Tax Department, for a presentation of information on the soil survey use compliance review being conducted by the Property Tax Division of the Tax Department. A copy of Ms. Hewson's prepared testimony is attached as Appendix I.

Ms. Hewson said a request was sent to each county director of tax equalization on August 30, 2007. She said the request asked for information on three components, including taxable acreage for each mapping unit/soil classification for each county, an index of mapping unit/soil classification, and an explanation of the methodology used by the county to apply the index. She said 12 counties provided information on all three components, 13 counties had information on one or two components, 22 counties did not have information to fulfill any of the components, and 6 counties did not respond to the request. She said the next section of the review will request information on the use of modifiers in agricultural property assessments.

Senator Cook asked how information will be obtained for the six counties that did not respond to the request for information. Ms. Hewson said the Tax Department is following up by contacting the chairman of the board of county commissioners in each of those counties.

Committee counsel said the committee has been given the responsibility to receive a report from each county that has not fully implemented use of soil survey information in assessments. He said it will take some time to complete this part of the committee assignment after it has been determined which counties are not in compliance. He asked when the Tax Department review of soil survey compliance will be completed. Ms. Hewson said the Tax Department has established a deadline of March 2008 to complete the compliance review.

Senator Cook asked whether Ms. Hewson expects some counties will be unable to meet the 2010 deadline for implementation of soil survey use in assessments. Ms. Hewson said she believes some counties would need an extension of that deadline. Senator Cook said at some point the committee needs to know which counties cannot meet the 2010 deadline and to ask those counties to come in and describe their situations in being unable to meet the deadline.

Representative Vig asked whether a cost of compliance for counties has been determined in implementing soil survey use in assessments. Ms. Hewson said she believes the North Dakota Association of Counties has been working on that issue.

Senator Urlacher said the deadline to implement use of soil surveys begins as a fairness issue. He said some counties have complied with the expressed intention of the Legislative Assembly in implementing use of soil surveys and some did not make any effort. He said the counties that complied have spent the money to improve assessments and it is not fair to taxpayers to allow some counties to continue to avoid using the best available information in assessments.

Representative Kasper asked whether the Tax Department could provide a map of counties showing compliance status in use of soil surveys.

Representative Schmidt said counties face a state mandate for soil survey implementation and the state should provide financial assistance. He said counties also face a mandate from the state regarding implementation of property tax relief. He said he has heard that these costs are substantial for counties.

Mr. Fong said counties may have had to pick up the cost of developing software for property tax statement changes. He said he thinks Ward and Cass Counties partnered on an improvement for property tax statements at little or no cost to the counties. He said with regard to the property tax relief implementation, the state is picking up the expenses of counties related to implementation through an appropriation provided to the Tax Commissioner.

Chairman Stenehjem called on Ms. Kathy Strombeck, for presentation of information requested on oil and gas tax allocations to producing counties. A copy of information provided by Ms. Strombeck is attached as Appendix J.

Ms. Strombeck said the information in the chart provided assumes oil and gas price and production remain constant at July 2007 levels. She said each county is subject to a different cap on oil and gas tax revenue receipts based on county population. She said it is estimated that Bowman County will reach its cap on revenue in the 4th month of the year, McKenzie County will reach its cap in the 9th month of the year, and Billings County will reach its cap in the 12th month of the year. She said estimated additional oil and gas tax revenue for the year which would have gone to the county if there were no caps is $7,935,176 for Bowman County and $1,105,202 for McKenzie County. She said it is not expected that Billings County would lose much revenue from the cap because the county will reach the cap in the final month of the fiscal year. She said the information provided does not reflect the impact of 2007 House Bill No. 1044, which becomes effective in fiscal year 2009, and which will allow an increased county share of oil and gas gross production tax revenues but will not raise the caps.

Representative Shirley Meyer asked how long it takes for oil tax revenues to come back to the producing county. Ms. Strombeck said tax revenues are returned to counties within three to four months after production.

Senator Urlacher asked whether all counties are levying more than 10 mills for road purposes. Ms. Strombeck said not all counties are levying at the 10-mill level but 2007 Senate Bill No. 2178 only requires a 10-mill levy for additional revenue when a county has reached its cap of oil and gas gross production tax revenue for the year.

Chairman Stenehjem called on Mr. Jerry Coleman, Department of Public Instruction, for a presentation of information on historical data on revenue collections as a share of state general fund revenues and the share of state general fund appropriations devoted to elementary and secondary education funding. A copy of a table of historical data is attached as Appendix K. Mr. Coleman reviewed the information provided and said since 1967 the share of state general fund revenue appropriated for elementary and secondary education has remained fairly constant and has generally been within a range of 28 percent to 31 percent of general fund appropriations.

Representative Drovdal said citizens in oil and gas-producing counties have concerns about use of imputed value of oil and gas tax revenue in the education funding formula for school districts. He said some people have stated that for school districts in oil and gas-producing counties, use of imputed value results in a 100 percent loss of school funding for each dollar allocated to a school district from oil and gas tax revenues. Mr. Coleman said he does not believe that is true and use of imputed value would have a variable effect on school district allocations under the funding for schools formula. He said he believes use of imputed value could result in a school funding reduction of approximately 75 percent of the dollars received by a school district in oil and gas tax revenues. Representative Drovdal asked whether state law imputes value to reduce school district funding allocations for any other revenues received by school districts. Mr. Coleman said he is not aware of any other use of imputed value.

Representative Herbel asked whether federal funds and other funding for education are reflected in the information provided on general fund spending for education. Mr. Coleman said the information provided is based on general fund spending, which would not include funding from the common schools trust fund or from federal sources. Mr. Coleman provided the committee with copies of calculations showing how imputed taxable valuation is expected to impact school aid allocations to school districts. A copy of the information provided is attached as Appendix L.

Chairman Stenehjem called on Mr. Lynn Helms, Director, Department of Mineral Resources, for a presentation of information on uranium mining taxes and regulation and energy efficiency for various energy sources. A copy of Mr. Helms's prepared testimony is attached as Appendix M.

Mr. Helms said uranium severance taxes are imposed in Colorado, Montana, Nebraska, South Dakota, and Wyoming. He said each of those states imposes a different tax rate based on value of uranium produced.

Mr. Helms said North Dakota Century Code Chapter 38-12 provides authority for the Department of Mineral Resources to regulate development and production of all subsurface minerals. He said the chapter specifically includes uranium in the definition of subsurface minerals. He said the Department of Mineral Resources believes it has adequate authority under current law to regulate development and production of uranium resources in the state.

Senator Urlacher asked how soon uranium extraction might begin in North Dakota. Mr. Helms said perhaps drilling operations will begin in the summer of 2008 and production could begin in the middle of 2009. Senator Urlacher asked if rules will be in place by the time of drilling and production to regulate uranium development. Mr. Helms said rules will be in place and the Department of Mineral Resources began working on uranium regulation issues several months ago.

Representative Boucher said land reclamation is an issue the Legislative Assembly has faced before with uranium production. He asked whether reclamation will be a driving concern in the rules regulating uranium development. Mr. Helms said reclamation will be a significant factor of regulation and bonding levels to ensure reclamation will have to be significantly higher than they were back in the 1960s.

Senator Urlacher asked whether the Department of Mineral Resources has examined uranium exploration and leasing agreements. Mr. Helms said the department has talked to citizens about that topic. He said the department will have a local meeting in Belfield to inform local citizens of uranium leasing issues.

Representative Drovdal asked whether there are potential effects of uranium activities on water wells. Mr. Helms said the risk of uranium contamination of a water table is minimal because uranium concentration is generally at a significantly deeper level.

Mr. Helms reviewed the information in his testimony relating to cost to produce a unit of energy for various sources. He said the computations converted energy produced into kilowatt-hours and calculated the cost per kilowatt-hour. He said on this basis, ethanol and biodiesel are the most expensive energy sources, ranking at a higher cost than petroleum-based gasoline and diesel fuel. He said various tax incentives are provided for certain energy sources to make them competitive in the marketplace.

STREAMLINED SALES TAX

Chairman Stenehjem called on Senator Cook to present an update on Streamlined Sales and Use Tax Agreement activities. Senator Cook distributed copies of the 2007 annual report of the Streamlined Sales Tax Governing Board. Senator Cook said there are currently 1,051 companies registered with the Streamlined Sales Tax Governing Board in the centralized registration system. He said the Streamlined Sales and Use Tax Agreement was implemented in 2005 with 13 member states. He said four states have joined the Streamlined Sales Tax Governing Board since it was established. He said member states reported that sellers who were not previously registered to conduct business in their states collected $88,958,093 in sales taxes for the 2007 fiscal year. He said this represents taxes that were owed but would otherwise not have been collected or paid to those member states.

Senator Cook said the primary issue that is keeping several states from becoming full member states relates to sourcing of sales. He said the Streamlined Sales and Use Tax Agreement requires member states to consider the place where goods are shipped as the point of sale. He said state and local sales tax revenue from companies having substantial interstate sales activities creates a significant political problem for some states to overcome.

Senator Cook said federal legislation has been introduced to allow states to impose sales and use taxes for companies previously not subject to state jurisdiction because they lack nexus. He said the legislation recognizes the efforts of states under the Streamlined Sales and Use Tax Agreement to make uniform the application of sales taxes among states. He said he is beginning to be optimistic that federal legislation will be enacted.

Senator Cook said he does not expect any need for substantial North Dakota legislative changes for streamlined sales and use tax compliance. He said it may be necessary to introduce legislation to do some cleanup but no large substantive changes should be required.

Representative Herbel said the report indicates that member states collected approximately $88 million in additional sales and use tax revenue. He asked what is the share of that revenue received by North Dakota. Mr. Myles Vosburg, Tax Department, said North Dakota has received approximately $1.5 million from companies registered under the Streamlined Sales Tax Governing Board which were not previously companies registered in North Dakota. He said this amount reflects collections for two years.

Senator Urlacher asked what the revenue potential is for North Dakota if all companies come on board under the Streamlined Sales Tax Governing Board. Senator Cook said the potential for North Dakota with full compliance and collection on interstate sales would be approximately $30 million per year additional revenue, or about $50 per capita.

Representative Boucher asked whether it is voluntary for sellers to register with the Streamlined Sales Tax Governing Board. Senator Cook said registration is voluntary unless Congress enacts legislation to make registration mandatory.

PROPERTY TAX STUDY

Chairman Stenehjem called on Mr. Mark Johnson, Executive Director, North Dakota Association of Counties, for testimony relating to several property tax issues. Mr. Johnson distributed copies of prepared testimony on several topics as requested by the committee. A copy of the prepared testimony is attached as Appendix N. Mr. Johnson said he would cover the first three issues and Mr. Terry Traynor, Assistant Director, would cover the remaining three issues.

Mr. Johnson said passage of 2007 House Bill No. 1303, requiring counties to incorporate soil survey data into the agricultural assessment process, has prompted activity among counties. He said the Association of Counties recognized that some counties will be found not in compliance with the required use of soil surveys. He said the Association of Counties Board of Directors requested that the association staff do what it can to assist counties in responding to the legislative mandate. He said long-term benefits and deadlines argue for implementing a geographic information system (GIS) solution to use of soil surveys. He said the Association of Counties recognized there are numerous vendors proficient in GIS technology. He said the problem is how counties can choose the right vendor for their needs. He said the Association of Counties has attempted to develop tools and information to help counties implement the best decision for their individual situations. He provided the committee copies of a request for proposal for use by counties in seeking digital agricultural parcel file development services. He also provided a copy of North Dakota digital parcel file standards compiled by the Association of Counties staff for use in digital parcel mapping for soil survey and assessment needs. He said counties have begun to consider options to update their assessment systems. He said a group of seven counties in the Devils Lake region has tentatively agreed to develop a single request for proposal. These counties are hopeful their joint effort will reduce costs and speed up the process. He said these counties are concerned about meeting the December 2009 deadline. He said these counties have requested that they be allowed to address the interim Taxation Committee to describe what they are undertaking and their concerns about the deadline under 2007 legislation.

Senator Cook commended the Association of Counties for helping counties implement soil survey use in assessments. He said with the large number of vendors available for GIS application, he wonders whether uniformity of systems will be a problem. Mr. Johnson said he does not think uniformity will vary. He said GIS usage should achieve the same results if minimum standards are required for vendors bidding on implementation.

Mr. Johnson said the committee requested information about potential statutory hindrances to consolidation and cooperation efforts of counties. He said an issue in some counties is a constitutional residency requirement for county offices and filling the office of state's attorney when the county does not have an attorney who is a resident of the county. He said the North Dakota State's Attorneys Association is examining this issue and the Advisory Commission on Intergovernmental Relations is also considering this topic. He said the Association of Counties hopes that one or both of these groups will develop draft legislation to solve the problem.

Mr. Johnson said the committee requested information showing for counties a comparison similar to the information provided for cities at the previous committee meeting to illustrate county valuation and levy changes from the year 2000 to the year 2006. He said a table is included in his prepared testimony showing taxable value, mills levied, and the dollars levied for each county for the years 2000 and 2006. He said the table also shows the percentage change in each county in taxable valuation, mills levied, and dollars levied for those years.

Mr. Traynor said the committee requested information on the producer price index for road and street construction. He said the producer price index for road and street construction is calculated by the United States Department of Labor, Bureau of Labor Statistics, which is the same agency that prepares various consumer price index calculations. He said the Association of Counties believes the producer price index is a more accurate reflection of the change in county road costs because it does not include consideration of sales and use taxes, which counties do not generally pay, and includes consideration of costs of fuel, labor, equipment, and other relevant components in road construction. This prepared testimony includes a graph comparing producer price index for highway and street construction to consumer price index changes since 1997. He said the graph shows that highway and street construction costs have risen much faster than consumer prices since 2004.

Mr. Traynor said the committee requested comparison of costs of county road maintenance in oil and gas impacted counties and other counties. He said the Association of Counties grouped Billings, Bowman, McKenzie, and Williams Counties as highly impacted by oil and gas development. He said Bottineau, Burke, Divide, Dunn, Golden Valley, Mountrail, Renville, Slope, and Stark Counties were grouped as moderately impacted. He said Dunn and Mountrail Counties have experienced recent impact growth and could soon join the highly impacted group. He said Burleigh, Cass, Grand Forks, and Ward Counties were grouped as urban counties because their road costs are significantly different from other counties. He said the remaining 37 counties were grouped in the "all other" group of counties for this analysis. He said the analysis indicates substantial cost increases in calendar years 2006 and 2007 compared to the previous 10-year period. He said the highly impacted and moderately impacted counties show a greater rate of increase than the "all other counties" category in expenditures per mile of roads. He said it is important to recognize that road expenditures are not a true expression of total road costs because expenditures are made from funds available and when funding is inadequate and road repairs must be delayed, the cost of road deterioration must also be considered.

Mr. Traynor said the committee requested information on township road expenditures. He said information was gathered to examine the two primary sources of township road funding which include township highway aid fund allocations from motor fuels tax revenue and property taxes levied by organized townships or levied by counties on behalf of unorganized townships. He said that on a statewide basis, it appears townships have approximately $400 per mile available for road maintenance. He said this amount is substantially less than the amounts determined by two studies as necessary to maintain gravel roads. He said it is apparent revenue sources for townships are insufficient to meet their local transportation needs.

LEAGUE OF CITIES

Chairman Stenehjem called on Mr. Jerry Hjelmstad, Assistant Director, North Dakota League of Cities, for information in response to committee requests. Mr. Hjelmstad said one of the issues the

League of Cities was requested to explore is the existence of written land development policies for cities. He said it appears after contacts with numerous cities that only the city of Bismarck has a written policy for land developers on costs to be prepaid by the developer and costs to be specially assessed by the city. Mr. Hjelmstad distributed a copy of the development costs policy for the city of Bismarck. A copy of the policy is attached as Appendix O.

Mr. Hjelmstad said a finding of interest from discussions with cities about development costs is that it appears cities in western North Dakota are more reluctant to use special assessments for development projects. He said this is apparently the result of the experience of western North Dakota in previous boom and bust cycles in the energy industry.

Mr. Hjelmstad said at the previous meeting, information was provided on the city of Devils Lake general fund revenues and expenditures in various categories. He said it was observed that the fees and fines category seemed larger for Devils Lake than for other cities. He said the League of Cities investigated the information and found that the Devils Lake enterprise fund had been included in the fees and fines category, which caused the distorted report. He provided the committee a copy of a new pie chart showing city of Devils Lake revenues and expenditures for general fund purposes. A copy of the chart is attached as Appendix P.

Mr. Hjelmstad said at the previous committee meeting, information was provided on city of Bismarck revenues and expenditures. He said it was observed that Bismarck revenues did not reflect the receipt of highway tax distribution fund money. Mr. Hjelmstad said the League of Cities staff discussed that issue with Bismarck city officials and learned that the city of Bismarck puts the highway tax distribution fund in a special street fund so it does not go into the general fund account and did not appear on the chart of general fund revenue.

Mr. Hjelmstad said North Dakota Century Code Section 40-23-24 requires audit of special assessment improvement projects if the final cost of an improvement exceeds the engineer's estimate of cost by 70 percent or more. He said the League of Cities was requested to determine whether the audit requirement under this provision has ever been triggered for a city special assessment project. He said the League of Cities staff contacted cities and could not find any instance of a city being required to audit a special assessment improvement because of the 70 percent excess cost requirement.

Senator Cook asked who polices the 70 percent excess cost audit requirement. Mr. Hjelmstad said an audit of the city would find the excess cost. Senator Cook requested committee counsel to provide information to the committee about how the 70 percent excess cost audit requirement is to be enforced.

Chairman Stenehjem called on committee counsel for presentation of a memorandum entitled *County and Township Highway Funds From Fuels Taxes, Registration Fees, and Property Taxes*. Committee counsel said tracking funds for political subdivision road and bridge purposes is difficult. He said 37 percent of the highway tax distribution fund is allocated to counties in proportion to the number of motor vehicle registrations in the county. He said a portion of the allocation for the county is allocated to cities. He said the amounts shown in the memorandum for counties exclude the amounts allocated to cities within each county. He said the amount shown is the total of allocations during the 12 months through October 2007, as reported on the State Treasurer's web site. He said the amounts shown as township road fund allocations come from one cent per gallon of motor and special fuels taxes not subject to refund. He said the money is allocated to counties based on the length of township roads. He said organized townships must provide 50 percent matching funds to receive an allocation. He said if a county has no organized townships, or has some organized and some unorganized, the county retains a portion of the funds for the benefit of unorganized township roads. He said there are four separate special fund levies counties may impose for road and bridge purposes. He said the dollar amount levied in each county in 2006 for each of the four special funds is shown in the memorandum. He said comparing tax levies and highway tax distribution fund allocations produces a ratio of approximately $8 highway tax distribution funds to $5 property tax levies by counties statewide. He said the statistics for some counties vary considerably from this ratio, which may indicate that some counties levy road and bridge taxes within the county general fund, which would not show up under the four separate levies in the memorandum.

PROPERTY TAX STUDY

Committee Discussion

Senator Cook said he is concerned that a decision of the State Board of Equalization was rejected by a board of county commissioners and has not been applied in that county. He said the committee needs to understand how the law works and whether a State Board of Equalization decision is unenforceable. He said the mission of the State Board of Equalization is to promote uniformity in property taxation as a matter of fairness to taxpayers.

Ms. Dickerson said the issue in the county in question is treatment of land under rural residential property. She said that land had previously been assessed as agricultural land. She said the correct assessment category for the land underlying taxable rural residential property is residential classification. She said the assessor changed the assessment of the property but was overruled by the county board of tax equalization. She said the question was presented to the State Board of Equalization, which concluded that the county was wrong and the property should be assessed as residential land. She said the board of county commissioners rejected the opinion of the State Board of Equalization by a three-to-two vote and the property classification for the land in question remains as agricultural.

Senator Cook said the issue he sees in this situation is the question of uniform application of property tax laws and whether decisions of the State Board of Equalization are unenforceable.

Senator Triplett said the remedy for concerned taxpayers in this situation is that every decision of a board of county commissioners is subject to district court review.

Senator Cook said in the situation discussed he is not certain there is any taxpayer who would be impacted significantly enough to be willing to take on the cost of a district court action. He said he would not be comfortable telling constituents that there is no legislative remedy when some property owners are given the benefit of an assessment that is not supported by law and the constituent must go to the expense of a district court action to remedy the situation.

Representative Schmidt said he believes the State Board of Equalization directives should be enforceable. He said the State Board of Equalization has the duty to equalize assessments as an issue of fairness for all taxpayers. He said if counties are able to reject decisions from the State Board of Equalization, it will be impossible to achieve fairness and uniformity.

Ms. Dickerson said it seems to her it would be appropriate to make decisions of the State Board of Equalization enforceable. She said this would give a county that disagrees with the State Board of Equalization the right to appeal the matter to district court. She said this would preserve the opportunity for court review but take the burden of court action off individual taxpayers.

Senator Cook said the statewide property tax equalization system is in jeopardy if there is no need for counties to comply with decisions of the State Board of Equalization.

Senator Urlacher said the fairness of property tax laws is only as good as uniform enforcement. He said he believes the state needs to require compliance from counties to maintain uniform application of the property tax laws.

Senator Stenehjem said it is hard for him as a citizen to see the fairness of being forced to go to court individually to correct a situation like this that affects many taxpayers. He said the effect in this situation may be small in dollars for each taxpayer but it is still wrong for an individual county to provide preferential assessment treatment to a few taxpayers at the expense of all other taxpayers in the county.

Senator Cook requested the Legislative Council staff be requested to prepare draft legislation to require compliance with decisions and directives from the State Board of Equalization and allow a county to appeal a directive from the State Board of Equalization to district court for review.

OIL TAX ALLOCATION

Committee Discussion

Representative Froseth said it is apparent that rural roads in oil production counties will require more funding. He said the question is how the committee should proceed on this issue.

Committee counsel said the committee requested a proposal from the Association of Oil and Gas Producing Counties at the previous meeting. He said he contacted the representative for the association and was told that the Association of Oil and Gas Producing Counties is not ready to make a recommendation at this time.

Representative Boucher said the oil industry has been good for the state. He said a greater share of oil tax revenue could be used for roads in the impacted area.

Senator Urlacher said the funding responsibility from oil impact should be split between local governments and the state. He said local governments are responsible for repair of ordinary wear and tear but when extraordinary wear and tear occurs because of oil industry traffic, the state needs to help address the funding of road repairs.

Representative Meyer said a special situation exists in counties in which oil production is developing. She said these counties need assistance to deal with road damage because oil tax revenues are not yet being received. She said she believes in Canada, local governments are allowed to borrow against future oil tax revenues to deal with road repairs. She said this might be something to consider in counties where oil production is in the development stage.

Representative Belter said a broader view of road impact should apply. He said impact to roads in the entire state should be addressed when heavy industry usage occurs. He said this may include road impact from the oil industry and other industries, such as ethanol production and intensive industrial or agricultural traffic.

No further business appearing, Chairman Stenehjem adjourned the meeting at 3:45 p.m.

John Walstad
Code Revisor

ATTACH:16