

Property Tax Elimination and Replacement Info

Source of Replacement

1. We must first acknowledge that spending in the state budget for the last decade or more has been rampant.
2. Similar to #1, we can show the very high revenue per capita in North Dakota relative to other states. The degree to which we show that the state takes in and spends revenue which exceeds the expected per capita needs of the state, sets the foundation for how the state may replace the revenue currently levied in property taxes, in part or in whole, without raising taxes.
3. Recognize that the state's budget is not static. It changes every two years. The amounts that are spent on programs and agencies change. The amounts of revenue in income tax, sales tax, oil taxes, etc change biennium to biennium. Formulas for how to spend and how much to spend change. The legislature sets up "buckets" of funds that revenue fills, and when a bucket is full, the revenue spills over to fill the next bucket. The legislature commonly rearranges and changes the buckets. The amount of money available in different funds at the end of a biennium changes. Additionally, we must remember that the money the state takes in revenue is fungible, meaning it can be effortlessly moved from one area to another, from one fund to another, from one type of expenditure to another.
4. When we show how property taxes can be replaced, we are not only giving one example of numerous ways in which the revenue can be replaced, we are giving the example based on circumstances *at that time*. I have previously shown in 2019, 2021, and now in 2023, by different examples how we can replace the property tax revenue. Because the legislature routinely and necessarily changes the budget parameters every biennium, any example of how we replace the property tax revenue also changes, because we must show it relative to the particulars of the state budget *at that time*. Also, at the completion of the current legislative session we can identify wasteful or imprudent spending that could be curbed, and those monies used to further offset the need for replacement revenue.
5. Stated simply, the budget is not static, therefore, the method of replacing property tax revenue is not static. We must simply and reliably show that by any number of methods, the legislature has the ability to replace property tax revenue without the need to increase sales tax or income tax.
6. Lastly we know that property tax replacement needs will go up every year, however, total state revenue also goes up every year, which fully addresses that aspect. We must not assess future needs based on current revenue.

Example for derivation of state revenue to replace property tax revenue:
2023, prior to the 2023-2025 Budget development.

Property Tax Elimination and Replacement Plan 2023

Example using 2021 property tax numbers (annual)

All of these numbers are *annual*, not to be confused with budget numbers, which are biennial.

\$1.41B Total Property Taxes

- (-) 147M Special Assessments
- (-) 110M General Bonds
- (-) 94M Centrally Assessed Taxes
- (-) 41M Special Taxes

 (the above deductions are in play because the measure does not eliminate these items

\$1B to be replaced annually

Replace with:

\$125M convert Prairie Dog funds to Prop Tax Replace Fund and make permanent

\$125M Legacy Fund Earnings (could be more, or less)

\$150M 3% Title Transfer Tax (IF the legislature chose to implement)

\$ 75M Foundation Aid Stabilization Excess (this will change)

\$ 50M BND Profits (could also add State Mill profits)

\$475M 1.25% Spending Cut X 4 Bienniums (Cut the state budget by only 1.25% successively for each of the next 4 bienniums, this savings will cover at least \$475M per year by the 4th biennium (1.25%, 2.5%, 3.75%, 5%). The savings will initially need to be augmented in the first three bienniums as the savings % increases. The state will have \$3B in excess funds at the end of the 2021-2023 biennium. Take a portion of those funds and put into the Property Tax Replacement Fund. Use \$675M in the first biennium, \$450M in the second, and \$225M in the third. No longer needed in the fourth biennium.

\$1B replaced annually

****This is one of many examples of how property tax revenue can be replaced with state tax revenue. Upcoming changes to the state budget and formulas will necessitate a change in the replacement plan.***



North Dakota Legislative Council

Prepared for Representative Becker
23.9346.02000
October 2022

PRELIMINARY ESTIMATE OF POTENTIAL FUNDING NEEDED TO REPLACE PROPERTY TAX REVENUES

This memorandum provides preliminary information on the potential fiscal effect of eliminating property taxes in the state.

Property taxes levied in 2021 payable in 2022 totaled \$1.410 billion, consisting of \$575 million for schools, \$434 million for cities, \$329 million for counties, and \$72 million for other districts. Of the \$1.410 billion total, \$147 million was for special assessments, \$94 million for centrally assessed taxes, and \$41 million for special taxes. In addition, based on property taxes payable in 2019, an estimated \$108 million of property taxes levied relate to payments on bonded indebtedness of schools (\$83 million), cities (\$22 million), and counties (\$3 million). These special and centrally assessed taxes, bond payment obligations, and assessments likely would not be eliminated as part of a property tax elimination proposal, leaving \$1.020 billion of property tax revenue to be eliminated based on property taxes levied in 2021 (the most current information available). If a proposal to eliminate property taxes becomes effective January 1, 2025, political subdivisions would no longer be allowed to levy property taxes beginning in 2025 payable in 2026. Therefore, assuming a 4.1 percent annual increase in property tax collections for the 4 years between 2021 and 2025 (4.1 percent is the average annual increase for property taxes levied during the 4-year period 2017 to 2021), the amount of property tax revenue that would need to be replaced in 2025 would be \$1.198 billion per year or \$2.396 billion per biennium. The 2021-23 biennium state budget totals \$17.847 billion, including general fund, special funds, and federal funds; therefore, the \$2.396 billion needed to replace property tax revenues would be equivalent to 13 percent of the total state budget. Please note the \$2.396 billion is based on estimated property taxes that would be levied in 2025 doubled for the biennial estimate and does not include any projected inflationary or other increases beyond 2025.

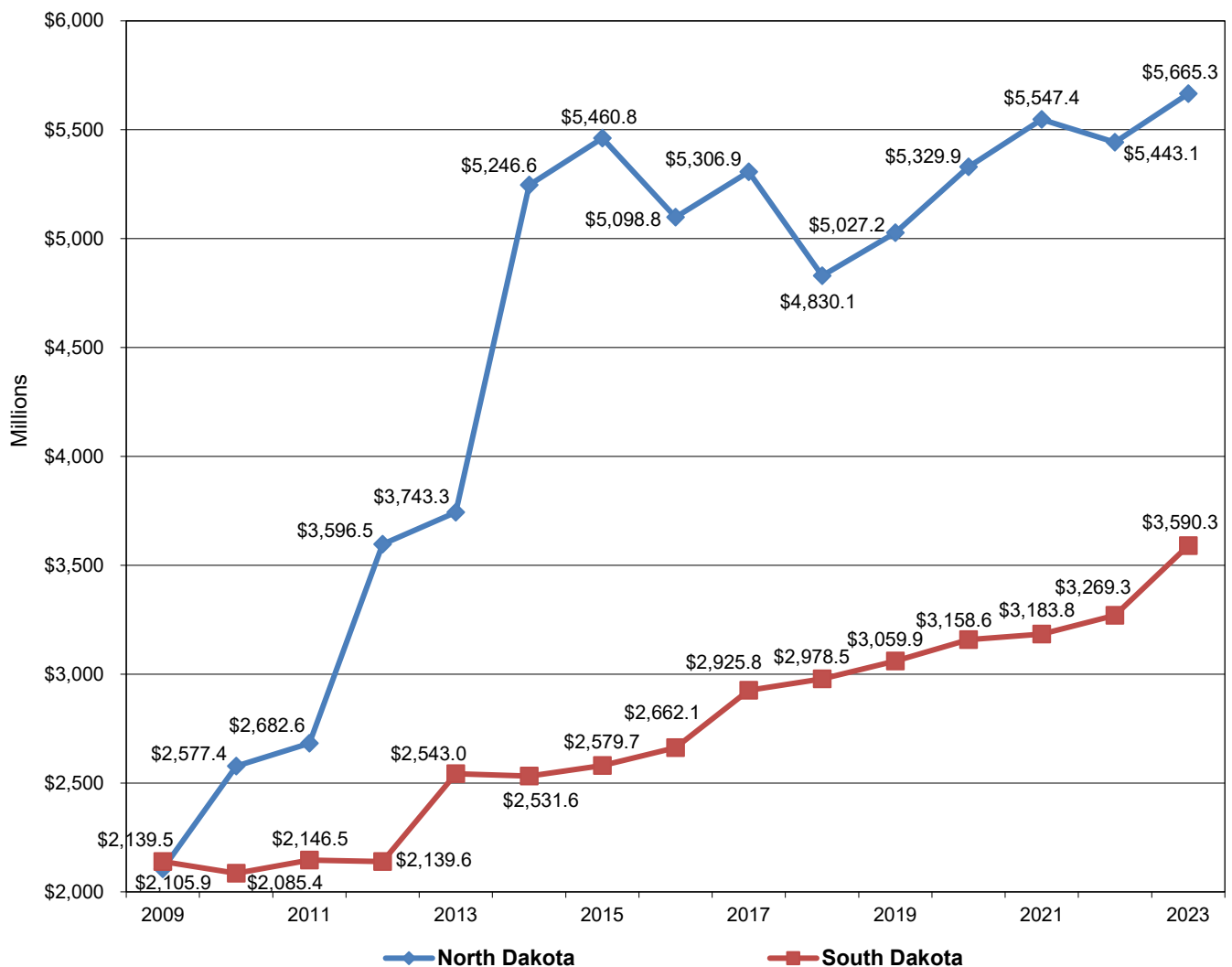


North Dakota Legislative Council

Prepared for Representative Becker
23.9343.01000
August 2022

COMPARISON OF NORTH DAKOTA STATE APPROPRIATIONS TO SOUTH DAKOTA STATE APPROPRIATIONS

This memorandum provides information regarding appropriations of state funds by North Dakota and South Dakota from fiscal year 2009 through fiscal year 2023. The following graph identifies North Dakota state appropriations and South Dakota original state appropriations, excluding federal funds, since fiscal year 2009. The annual North Dakota amounts represent 49 percent of the biennial appropriation for the 1st year of each biennium and 51 percent of the biennial appropriation for the 2nd year of each biennium.



Additional detail regarding state appropriations by North Dakota and South Dakota is provided in the following schedule:

Fiscal Year	North Dakota			South Dakota			Difference Total
	General Fund	Other Funds	Total	General Fund	Other Funds	Total	
2009	\$1,312,899,770	\$793,040,716	\$2,105,940,486	\$1,220,090,055	\$919,365,350	\$2,139,455,405	(\$33,514,919)
2010	1,615,331,868	962,050,270	2,577,382,138	1,133,975,639	951,430,291	2,085,405,930	491,976,208
2011	1,681,263,781	1,001,317,627	2,682,581,408	1,164,617,153	981,865,199	2,146,482,352	536,099,056
2012	2,105,530,569	1,490,947,696	3,596,478,265	1,150,285,248	989,310,838	2,139,596,086	1,456,882,179
2013	2,191,470,592	1,551,802,705	3,743,273,297	1,246,026,657	1,296,954,636	2,542,981,293	1,200,292,004
2014	3,371,038,976	1,875,579,148	5,246,618,124	1,327,449,577	1,204,111,436	2,531,561,013	2,715,057,111
2015	3,508,632,404	1,952,133,399	5,460,765,803	1,391,836,433	1,187,851,294	2,579,687,727	2,881,078,076
2016	2,786,773,036	2,311,987,971	5,098,761,007	1,433,107,085	1,229,024,216	2,662,131,301	2,436,629,706
2017	2,900,518,875	2,406,354,827	5,306,873,702	1,598,139,847	1,327,642,689	2,925,782,536	2,381,091,166
2018 ¹	2,168,653,183	2,661,409,214	4,830,062,397	1,590,098,880	1,388,382,343	2,978,481,223	1,851,581,174
2019 ¹	2,257,169,639	2,770,038,162	5,027,207,801	1,641,545,684	1,418,360,081	3,059,905,765	1,967,302,036
2020 ¹	2,432,900,551	2,896,963,128	5,329,863,679	1,700,739,356	1,457,871,721	3,158,611,077	2,171,252,602
2021 ¹	2,532,202,615	3,015,206,520	5,547,409,135	1,742,576,075	1,441,239,074	3,183,815,149	2,363,593,986
2022 ^{1,2}	2,455,124,092	2,987,992,307	5,443,116,399	1,818,313,439	1,451,012,100	3,269,325,539	2,173,790,860
2023 ^{1,2}	2,555,333,238	3,109,951,177	5,665,284,415	2,061,336,475	1,528,948,041	3,590,284,516	2,074,999,899
Total	\$35,874,843,189	\$31,786,774,867	\$67,661,618,056	\$22,220,137,603	\$18,773,369,309	\$40,993,506,912	\$26,668,111,144

¹Beginning with fiscal year 2018, North Dakota other funds appropriations include other funds for the North Dakota University System. Previously, other funds appropriations for the University System were provided only for certain items, such as capital projects. The University System does not identify the amount of federal funds included in other funds.

²Federal funds are not separately appropriated by the North Dakota Legislative Assembly, so the fiscal years 2022 and 2023 other funds amounts represent total other funds appropriations, less estimated federal funds appropriations of \$6,738,294,683.



PROPERTY TAX RELIEF PROGRAMS - 2007-09 THROUGH 2021-23 BIENNIUMS

The schedule below provides information on property tax relief programs provided by the Legislative Assembly for the 2007-09 biennium through the 2021-23 biennium.

	Estimated Fiscal Impact								
	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium	2019-21 Biennium	2021-23 Biennium	Total
School-related mill levy reductions									
Mill levy reduction grants		\$299,444,264	\$341,790,000						\$641,234,264
Mill levy reduction in integrated school formula payments				\$656,473,838 ¹	\$988,000,000 ²	\$1,081,000,000 ²	\$1,160,000,000 ²	\$1,235,000,000 ²	5,120,473,838
Total school-related mill levy reductions	\$0	\$299,444,264	\$341,790,000	\$656,473,838	\$988,000,000	\$1,081,000,000	\$1,160,000,000	\$1,235,000,000	\$5,761,708,102
Homestead and disabled veterans' tax credits									
Homestead and disabled veterans' property tax credit programs	\$8,104,000	\$10,774,000	\$14,018,563	\$27,678,000	\$25,865,091	\$24,820,200	\$28,250,200	\$34,300,000	\$173,810,054
Homestead income tax credit for property tax relief	112,000,000								112,000,000
Total homestead tax credits	\$120,104,000	\$10,774,000	\$14,018,563	\$27,678,000	\$25,865,091	\$24,820,200	\$28,250,200	\$34,300,000	\$285,810,054
Other property tax relief									
State-paid property tax relief credits (12 percent property tax credit)				\$200,000,000	\$241,525,000				\$441,525,000
State funding of certain county costs of child welfare and service payments for elderly and disabled services					19,300,000	\$23,300,000	\$23,300,000	\$0 ³	65,900,000
State grants to counties - Emergency human service levies					3,900,000				3,900,000
County economic assistance and social services financing pilot program						160,700,000			160,700,000
County social and human services project							173,700,000	189,917,386	363,617,386
State funding of clerk of court costs formerly paid by counties	\$13,587,187	\$15,253,306	\$16,795,673	20,432,528	24,603,806	23,936,056	24,957,631	25,212,502	164,778,689
Total other property tax relief	\$13,587,187	\$15,253,306	\$16,795,673	\$220,432,528	\$289,328,806	\$207,936,056	\$221,957,631	\$215,129,888	\$1,200,421,075
Total property tax relief	\$133,691,187	\$325,471,570	\$372,604,236	\$904,584,366	\$1,303,193,897	\$1,313,756,256	\$1,410,207,831	\$1,484,429,888	\$7,247,939,231

¹Prior to 2013, state school aid funding was based on a per-student formula payment. The state school aid funding included mill levy reduction grants, which provided a reduction in school district property tax levies. The 2013 Legislative Assembly approved the implementation of a new formula, which integrates property tax relief in the K-12 state school aid funding formula. Funding for the formula is provided through a combination of local tax sources, local revenue, and state school aid payments. The amount shown for the 2013-15 biennium reflects an estimate from the Department of Public Instruction, which was based on the per-student formula that was used prior to fiscal year 2013.

²This amount is an estimate based on the value of 115 mills statewide. In 2013 the Legislative Assembly approved the integration of property tax relief into the state school aid funding formula to provide for a mill levy buydown totaling 125 mills, 50 mills more than the previous biennium. The changes made in 2013 allow school districts to levy an additional 10 mills for general fund purposes; therefore, the mill levy reduction estimate used in the calculation above is 115 mills (125 mill buydown less the 10 mills of additional general fund levy authority).

³The Department of Human Services is unable to determine the amount of general fund support in the department's legislative appropriation for paying the county costs of child welfare, service payments for elderly and disabled, and technology costs.

IMPACT OF STATE-PAID PROPERTY TAX RELIEF ON INDIVIDUAL PROPERTY TAXPAYERS

The first step in calculating a property's taxable valuation is determining the property's true and full value. Assessors use a property's true and full value to calculate the property's assessed value. The assessed value of property is equal to 50 percent of the property's true and full value. The taxable value of the property is determined as a percentage of the assessed value, which is 9 percent for residential property. Applying these calculations, a parcel of residential property with a true and full value of \$200,000 would have an assessed value of \$100,000 and a taxable value of \$9,000.

Once valuations are finalized, each taxing district prepares a budget to determine the amount of property tax revenue required by the taxing district. Generally, to determine the overall mill rate for a taxing district, the county auditor verifies the amounts levied are within statutory limitations and divides the total amount of property tax revenue required by the taxing district by the total taxable value of all property in the taxing district. The resulting mill rate is multiplied by the taxable value of a property owner's parcel to determine the amount of property tax owed by the property owner.

One mill is equal to one-tenth of 1 percent of a property's taxable value, or \$1 for each \$1,000 of taxable value. Thus, the value of one mill varies for each property based on the property's taxable value. For example, property taxes assessed against a property with a taxable value of \$9,000 would be equal to \$9 per mill levied by each taxing district, while property taxes assessed against a neighboring residential property with a taxable value of \$18,000 would be equal to \$18 per mill levied.

For the 2019-21 biennium, the total statewide property tax burden was \$3,529,551,091. The amount of that figure paid by state sources was \$1,410,207,831, leaving a remaining \$2,119,343,260 to be paid by property owners. The state-paid property tax relief results in a 39.95 percent overall reduction in the property tax burden statewide.

If we assumed an equivalent 39.95 percent reduction on a home with a true and full value of \$200,000, and assume the property is subject to a total combined mill levy by all taxing districts of 250 mills, the resulting tax reduction in dollars would be \$898.88, which would equate to just under a 100-mill reduction.

Property Taxes Paid as a Percentage of Owner-Occupied Housing Value

Calendar Year 2020

State	Effective Tax Rate	Rank	State	Effective Tax Rate	Rank
U.S.	1.08%		Mont.	0.75%	33
Ala.	0.39%	49	Nebr.	1.61%	8
Alaska	1.02%	21	Nev.	0.60%	41
Ariz.	0.65%	39	N.H.	1.96%	3
Ark.	0.64%	40	N.J.	2.21%	1
Calif.	0.73%	34	N.M.	0.66%	37
Colo.	0.54%	47	N.Y.	1.38%	13
Conn.	1.76%	5	N.C.	0.82%	21
Del.	0.59%	42	N.D.	0.95%	23
Fla.	0.91%	26	Ohio	1.58%	9
Ga.	0.91%	25	Okla.	0.88%	27
Hawaii	0.31%	50	Ore.	0.94%	24
Idaho	0.70%	35	Pa.	1.49%	11
Ill.	2.05%	2	R.I.	1.43%	12
Ind.	0.84%	30	S.C.	0.56%	45
Iowa	1.50%	10	S.D.	1.18%	17
Kans.	1.32%	15	Tenn.	0.68%	36
Ky.	0.82%	32	Tex.	1.66%	6
La.	0.54%	48	Utah	0.59%	43
Maine	1.25%	16	Vt.	1.82%	4
Md.	1.04%	20	Va.	0.87%	29
Mass.	1.14%	18	Wash.	0.88%	28
Mich.	1.38%	14	W.Va.	0.55%	46
Minn.	1.10%	19	Wis.	1.63%	7
Miss.	0.65%	38	Wyo.	0.56%	44
Mo.	0.99%	22	D.C.	0.61%	(41)

North Dakota Ranking Among States

2011	1.23%	16th highest
2020	0.95%	23rd highest***
2020	1.33-2.1%	15th-2nd highest

2021 Grand Forks County Real Estate Tax Statement

Parcel Number: 44-3107-00026-000
Owner: [REDACTED]
Jurisdiction: Grand Forks City
Physical Location: [REDACTED] RD
GRAND FORKS
Acres: 0
Legal Description: [REDACTED] HEIGHTS ADDITION
[REDACTED] RD. LOT 10
B02

1.46%=2.12%

Legislative tax relief (3-year comparison)	2019	2020	2021
Legislative tax relief	1,671.52	1,679.17	1,683.73
Tax distribution (3-year comparison):	2019	2020	2021
True and Full Value	253,600	253,600	255,000
Taxable Value	11,412	11,412	11,475
Less: Homestead credit	0	0	0
Disabled Veterans credit	0	0	0
Net Taxable Value	11,412	11,412	11,475
Total mill levy	320.870	317.820	325.190
Taxes By District (in dollars):			
City	1,126.00	1,116.88	1,113.32
Park	445.07	435.84	434.68
County	902.60	887.17	874.84
School	1,152.60	1,151.92	1,273.72
Soil Conservation	12.66	12.32	12.04
State	11.42	11.42	11.48
Garrison Diversion	11.42	11.42	11.48
Consolidated tax	3,661.77	3,626.97	3,731.56
Net effective tax rate	1.44%	1.43%	1.46%

2021 Cass County Real Estate Tax Statement

Parcel Number: [REDACTED]
Owner: [REDACTED]
Jurisdiction: West Fargo City
Physical Address: [REDACTED] W
WEST FARGO, ND 58078
Legal Description: Lot: 6 Block: 1 Addition: Oakwood Bend 1st Addition Additional: OAKWOOD BEND 1ST LT 6 BLK 1
**ANNEXED 2002

1.39%=2.0%

Legislative tax relief	2019	2020	2021
Legislative tax relief	4,048.58	3,956.25	4,393.84
Property Valuation			
True & Full Value	652,500	636,200	716,000
Taxable Value	29,363	28,629	32,220
Total mill levy	300.09	299.91	309.12
Summary of Taxes			
Consolidated Tax	8,811.54	8,586.12	9,959.85
Total Tax	8,811.54	8,586.12	9,959.85
Taxes by District (in dollars)			
County	1,535.68	1,462.08	1,636.78
State Medical	29.36	28.63	32.22
County Soil Conservation	11.16	12.60	15.79
City of West Fargo	2,289.73	2,217.89	2,614.33
West Fargo Park Distist	794.56	760.10	929.22
West Fargo Public School District #6	4,030.37	3,992.31	4,612.62
Southeast Water Resource District	120.68	112.51	118.89
Total Tax	8,811.54	8,586.12	9,959.85
Net effective tax rate %	1.35	1.35	1.39

2021 Burleigh County Real Estate Tax Statement

Parcel Number: [REDACTED]
Owner: [REDACTED]
Jurisdiction: 010101
Physical Location: [REDACTED] DR
BISMARCK, ND
Legal Description: [REDACTED] 5TH
BLK:6
[REDACTED] Block: 6 LOT 8

1.14%=1.77%

Legislative tax relief (3-year comparison)	2019	2020	2021
Legislative tax relief	2,110.67	2,265.97	2,325.38
Tax distribution (3-year comparison):	2019	2020	2021
True and Full Value	337,800	363,600	373,500
Taxable Value	15,201	16,362	16,808
Less: Homestead credit	0	0	0
Disabled Veterans credit	0	0	0
Net Taxable Value	15,201	16,362	16,808
Total mill levy	236.590	244.940	254.140
Taxes By District (in dollars):			
City	895.02	1,124.05	1,306.82
County	536.60	562.20	578.20
Park	520.16	551.24	568.10
School (after State Reduction)	1,629.43	1,753.86	1,801.66
State	15.20	16.36	16.80
Consolidated tax	3,596.41	4,007.71	4,271.58
Net effective tax rate	1.06%	1.10%	1.14%

CHAPTER 528

S. B. No. 137

(Torgerson)

(From Personal Property Tax Commission Study)

**PERSONAL PROPERTY TAX REPEAL
AND REVENUE REPLACEMENT****AN ACT**

To provide for the levying and collection of a tax for the privilege of doing business in this state on businesses, corporations, and cooperative corporations; to provide for the imposition of a tax upon banks, trust companies, and building and loan associations for the privilege of transacting business in this state and providing penalties; to allocate moneys to counties and their political subdivisions; and to create and enact subsection 25 of section 57-02-08 and sections 57-39.2-03.1, 57-39.2-03.2, 57-39.2-08.1, 57-40.2-03.1, 57-40.2-03.2, and 57-40.3-03.1 of the North Dakota Century Code, relating to the elimination of personal property taxes on personal property not required to be assessed by the state board of equalization, and to provide for a separate and additional sales, use, and excise tax of one percent and to broaden the base of the sales and use taxes; to exempt certain food products from sales and use taxes; and to repeal sections 18-03-09 and 37-01-27, chapter 57-03, section 57-15-23, and subsection 14 of section 57-39.2-04 of the North Dakota Century Code, relating to the per capita school tax; exemption from the sales tax on sales made from vending machines; and the assessment and valuation of grain; declaring legislative intent; and providing an appropriation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1.) Subsection 25 of section 57-02-08 of the 1967 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

25. All personal property not required by section 179 of the Constitution of North Dakota to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter; provided that this provision shall not apply to any property that is either subjected to a tax which is imposed in lieu of ad valorem taxes or to any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law except as specifically provided in this Act. In

**57-39.2-26.3. County aid distribution fund - State treasurer - Continuing appropriation.
(Effective through June 30, 2023)**

1. There is created in the state treasury the county aid distribution fund. The fund consists of all moneys transferred to the fund under subsection 2. All moneys in the fund are appropriated to the state treasurer on a continuing basis for the purpose of providing allocations to an eligible county.
2. Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to one-fourth of one percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the county aid distribution fund. The tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the county aid distribution fund as determined under this subsection.
3. At least quarterly, the state treasurer shall allocate the moneys in the fund to the county with the lowest ratio of taxable property values per capita and a population of more than ten thousand.
4. The county treasurer shall deposit all revenues received under this section in the county general fund.
5. For purposes of determining taxable property values under this section, the state treasurer shall use the most recent data published by the tax commissioner in the tax levy report.

6. For purposes of determining the county's population under this section, the state treasurer shall use the most recent actual or estimated census data published by the United States census bureau.

November 2011

PROPERTY TAX ELIMINATION INITIATED MEASURE - ANALYSIS OF ISSUES RAISED BY THE PROPERTY TAX MEASURE REVIEW COMMITTEE

PRELIMINARY CONSIDERATIONS

The basic rules of statutory construction apply with equal force to legislation by the people through the initiative process. 42 Am. Jur. 2d *Initiative and Referendum* § 49. The fact that the measure being reviewed is an initiated constitutional amendment does not change the basis of judicial construction. The North Dakota Supreme Court has stated that principles of construction applicable to statutes are generally available to construction of the constitution. *McCarney v. Meier*, 286 N.W.2d 780 (N.D. 1979). In *Kelsh v. Jaeger*, 641 N.W.2d 100 (N.D. 2002), the North Dakota Supreme Court listed several principles for construing constitutional provisions, including:

- When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement.
- The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself.
- We give words in a constitutional provision their plain, ordinary, and commonly understood meaning.
- When interpreting constitutional provisions, we apply general principles of statutory construction.
- We must give effect and meaning to every provision and reconcile, if possible, apparently inconsistent provisions.
- We presume the people do not intend absurd or ludicrous results in adopting constitutional provisions, and we therefore construe such provisions to avoid those results.

Rules of interpretation for statutory provisions are described at 73 Am. Jur. 2d *Statutes* § 171 as follows:

It is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. Under such circumstances, it is presumed that undesirable consequences were not intended; instead, it is presumed that the statute was intended to have the most beneficial operation that the language permits. A construction of which the statute is fairly susceptible is favored which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences. On the other hand, where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom. The undesirable consequences do not justify a

departure from the terms of the act as written. In such case, the consequences, if objectionable, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial action in the guise of interpretation.

The North Dakota Legislative Assembly has set out in statute rules of interpretation to be used in statutory construction. Most of these rules were drawn from court decisions and are codified in North Dakota Century Code Chapter 1-02, which, among other things, includes the following provisions:

1-02-02. Words to be understood in their ordinary sense. Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.

1-02-05. Construction of unambiguous statute. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

1-02-06. Clerical and typographical errors. Clerical and typographical errors shall be disregarded when the meaning of the legislative assembly is clear.

1-02-07. Particular controls general. Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

1-02-30. Vested rights protected. No provision contained in this code may be so construed as to impair any vested right or valid obligation existing when it takes effect.

1-02-38. Intentions in the enactment of statutes. In enacting a statute, it is presumed that:

1. Compliance with the constitutions of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over any private interest.

1-02-39. Aids in construction of ambiguous statutes. If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

1. The object sought to be attained.
2. The circumstances under which the statute was enacted.
3. The legislative history.
4. The common law or former statutory provisions, including laws upon the same or similar subjects.
5. The consequences of a particular construction.
6. The administrative construction of the statute.
7. The preamble.

CONSIDERATION OF ISSUES RAISED BY THE COMMITTEE

Effective Date Issues

Section 7 of initiated constitutional measure No. 2 (attached as an [appendix](#)) on the June 12, 2012, primary election ballot (measure No. 2) provides that the measure is effective January 1, 2012. Section 8, Article III, of the Constitution of North Dakota, provides that an initiated or referred measure which is approved shall become law 30 days after the election, which in the case of measure No. 2 would be July 12, 2012. It appears the drafters of the initiated measure recognized the absurdity and administrative and legal difficulties that would exist if the property tax were eliminated in the course of a property tax year. It appears the effective date provision, which would be more appropriately considered an application date provision, was included to make the property tax elimination effective beginning with the full 2012 property tax year. What is prohibited by Section 1 of measure No. 2 is "levying" of property tax. The levying of a tax occurs at a definite time by action of the governing body of a political subdivision, which cannot occur later than October 10 (Section 57-15-31.1). The 2011 levy occurred before and the 2012 levy will occur after any potential interpretation of the effective date of measure No. 2. It appears the measure should be interpreted to apply for 2012 and succeeding tax years.

It appears the effective date of the measure would not affect 2011 property tax year liability because the liability for property taxes attaches at the conclusion of the 2011 tax year, which occurs at the same instant, or perhaps the instant just before, the measure would become effective. To interpret the measure as eliminating 2011 tax year liabilities would contravene Section 18, Article X, of the Constitution of North Dakota, which prohibits gifts of state or political subdivision funds "in aid of any individual, association or corporation except for reasonable support of the poor," because the North Dakota Supreme Court has concluded that once a tax liability has attached, any

forgiveness of that obligation is an unconstitutional gift in violation of the constitutional prohibition. In *Petters & Co. v. Nelson County*, 281 N.W. 61 (N.D. 1938), the North Dakota Supreme Court held that real estate taxes paid by the purchaser of a tax sale certificate could not be refunded if no provision of law in existence at the time of the purchase authorized any refund of those taxes. The court found a later enacted law invalid to the extent that it provided for refund of such taxes on the grounds that the law violated the constitutional gift prohibition (Section 185 of the Constitution of North Dakota at that time) because at the time the purchaser paid the taxes, the purchaser had no legal, equitable, or moral claim to a refund. The court found that the subsequent legislative enactment allowing such a refund was an unconstitutional gift.

The North Dakota Supreme Court has concluded that the repeal of a tax does not extinguish tax liabilities that existed at the time of repeal and administrative and penalty provisions that existed at the time of repeal continue to apply to unpaid tax liabilities. *Cuthbert v. Smutz*, 282 N.W. 494 (1938). In *Cuthbert*, a 1935 income tax law enacted as an emergency measure was repealed by referendum in the 1936 primary election. The appellant argued that the 1936 repeal canceled any right to collect the 1935 income tax. The court disagreed and stated that the date December 31, 1935, was the date that fixed the period of liability for the income tax year and that date occurred before the referendum election. In addition, Section 1-02-17 provides that the repeal of any statute by the Legislative Assembly, or by the people through an initiated law, does not have the effect of releasing or extinguishing any penalty, fine, liability, or forfeiture incurred under such statute.

Effect on Property Taxes

Property taxes would be eliminated by enactment of measure No. 2 because all property taxes are levied on the assessed value of property. This would apply to general fund and special fund levies of all political subdivisions, including property taxes levied and dedicated to retirement of political subdivision indebtedness or tax increment financing projects. However, elimination of property taxes dedicated for bonded debt may be delayed in becoming effective.

The language of Section 1 of measure No. 2 appears to clearly eliminate levying property taxes dedicated to retirement of political subdivision general obligation bond issues because the taxes levied for those purposes are a tax on assessed value of real property. However, bonded indebtedness is issued under a contractual agreement between the political subdivision and the bondholders in which the political subdivision pledges to levy dedicated property taxes until the bonded indebtedness is retired. This contractual agreement would certainly be "substantially impaired" if the measure is interpreted to take away the authority to levy the property taxes required to make payments to bondholders. Whether

this would constitute a violation of the contract clause of the United States Constitution (Article I, Section 10) is an issue that must be considered. The contract clause of the Constitution provides that "no state shall . . . pass any . . . law impairing the obligation of contracts" A similar prohibition is contained in Section 18, Article I, of the Constitution of North Dakota. A summary of court decisions on this issue is contained in 16B Am. Jur. 2d *Constitutional Law* § 787 where it is stated:

The contract is substantially impaired when legislation detrimentally affects the financial framework that induced the bondholders to originally purchase the bonds, without providing alternative or additional security. This is true even if the market for the bonds remains strong following the law's enactment. The financial framework of a bond contract is detrimentally affected when a law put into effect after bonds were issued diminishes a tax source (that is, repeals a tax or reduces the tax base) that was pledged to support repayment of the bonds. However, as long as the bond-issuing entity is clearly able to repay its obligations within statutory and constitutional limitations, legislation reducing the entity's tax base does not impair the obligation of contracts in violation of the contract clause.

It appears that elimination of property taxes pledged to payment of bonded indebtedness would be a substantial impairment of contractual rights of bondholders, and a court could find measure No. 2 to be an unconstitutional violation of the United States Constitution's prohibition against impairment of contracts. However, the overriding objective of construing constitutional provisions is to give effect to the intent and purpose of the people adopting the constitutional provision. The North Dakota Supreme Court has ruled that if a statute is capable of two constructions--one that would render it of doubtful constitutionality and one that would not--the constitutional interpretation must be selected. *Peterson v. Peterson*, 559 N.W.2d 826 (1997). In addition, there is a statutory presumption (Section 1-02-38) that compliance with the federal and state constitutions is intended. The question would become whether there is an interpretation that would allow property taxes to continue to be levied after measure No. 2 becomes effective, to the extent of funds dedicated for payment for bonded indebtedness obligations. Political subdivision property taxes are generally thought to be levied annually. A plausible argument can be made that the property taxes for payment for bonded indebtedness obligations were actually "levied" before the effective date of the measure and that the obligation continues after the effective date of the measure. This argument would be supported by Section 21-03-15, which provides that the "governing body of every municipality issuing bonds . . . , before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax

which, together with any other moneys provided by, or sources of revenue authorized by, the Legislative Assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity." Additional support for this argument is found in Section 21-03-23, which requires certification to the county auditor at the time of a bond issue the amount to be levied each year to retire the debt.

The argument that the property taxes for payment of bonded indebtedness were levied before the effective date of measure No. 2 is further supported by Section 16, Article X, of the Constitution of North Dakota, which provides:

Any city, county, township, town, school district or any other political subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

The argument is further supported by views that new law must be applied only looking forward in time, expressed in these two decisions of the North Dakota Supreme Court from the 1920s.

E.J. Lander & Co. v. Deemy, 176 N.W. 922 (1920):

The rule is that statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction. . . . The rule is especially applicable where the statute, if given a retrospective operation, would be invalid, as impairing the obligation of contracts or interfering with vested rights. The principle that all statutes are to be so construed, if possible, as to be valid, requires that a statute shall never be given a retrospective operation, when to do so would render it unconstitutional, and the words of the statute admit of any other construction.

Patterson Land Co. v. Merchants' Bank, 212 N.W. 512 (1927):

. . . statute must be presumed as prospective only. In other words, it must be presumed that the legislature did not intend it to apply to contracts in existence at the time of its going into effect. Otherwise the statute would be unconstitutional as impairing the obligations of contracts.

If the argument that taxes for existing debt were levied before the measure's effective date is valid, property taxes could continue to be collected until payment of the bonded indebtedness obligation is completed. If this argument is valid, another question would be raised about bonds issued by political subdivisions from January 1, 2012, (the declared

effective date of measure No. 2) until July 12, 2012 (the effective date of measure No. 2 under the constitutional effective date provision). Because the law in effect during the time period in question would allow political subdivisions to pledge property tax revenues for payment of bonded indebtedness obligations, and because the outcome of the June 2012 election is not known until the election and canvass is completed, it appears an argument could be made that property tax levies pledged to bonded indebtedness obligations during that time period would be considered to be levied before the measure prohibits levying property taxes. However, caution must be advised on bond issues during that time period unless court decisions provide some certainty. It appears that if measure No. 2 is enacted, a political subdivision could not issue bonds after July 12, 2012, because the political subdivision could not make a valid levy of necessary property tax revenues.

If courts do not conclude that property taxes may continue to be levied for previously issued bonds and property tax authority is eliminated for payment of bonded indebtedness, another consideration is whether the state would be deemed to have assumed the bonded indebtedness obligation. If that is the case, it appears that would be a violation of the state's debt limit imposed by Section 13, Article X, of the Constitution of North Dakota, which limits state debt for bonds to \$2 million, unless any additional amount is secured by first mortgage upon real estate. The North Dakota Supreme Court stated in *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690 (1984):

We decline to extend the special-fund doctrine as requested by the respondents, and agree with those jurisdictions which hold that an obligation to be funded from general tax revenues, whether they be ad valorem or excise taxes, is a "debt" within the meaning of the debt limitation provision. Therefore, the special-fund doctrine does not exempt such obligations from the \$2,000,000 debt limitation contained in our State Constitution.

The issue of whether state assumption of bonded indebtedness would violate the specific \$2 million limit of Section 13, Article X, of the Constitution of North Dakota, could raise another issue of conflict resolution--whether measure No. 2 could be interpreted as a "general" provision allowing state assumption of debt in excess of the "specific" \$2 million limit because measure No. 2 is later enacted.

Effect of Measure No. 2 on Existing Tax Types

Section 1 of measure No. 2 would prohibit the Legislative Assembly and political subdivisions "from raising revenue to defray the expenses of the state or political subdivisions through the levying of a tax on the assessed value of real or personal property." It appears the significant definitional issues are what constitutes a "tax" and what constitutes "assessed value." A tax is "an enforced contribution for public

purposes." *Menz v. Coyle*, 117 N.W.2d 290 (N.D. 1962). The point is that it does not matter if a charge is called a tax, assessment, fee, or by any other name, the charge will be considered a tax. *Webster's Online Dictionary* defines assess as "to estimate the value of property for taxation." The word assess may also be used in the sense of "to impose a tax." However, as used in Section 1 of measure No. 2, in the phrase "levying of a tax on the assessed value . . .," it appears clear that "levying" is used in the sense of imposing a tax and "assessed" is used in the sense of estimating value of property for taxation. This is significant to resolving the question of whether the measure applies to some tax types. This is also consistent with the intention of the sponsors of measure No. 2, expressed in the petition title, that the measure would eliminate "property taxes . . ."

There are several tax types under North Dakota law which contain a statutory statement that the tax is imposed "in lieu of property taxes." It has been suggested by some observers that these "in lieu of" taxes would be eliminated by measure No. 2 at the time property taxes are eliminated. However, it does not appear that the fact a tax is stated to be "in lieu of property taxes" means the tax would be eliminated. What the measure would eliminate is levying of a tax on the assessed value of real or personal property. Many of the "in lieu" taxes imposed by the state are based on assessed value of property, but many are not. In the case of certain state-owned property, the Legislative Assembly made a decision that acquisition of the property by the state and removal from the tax rolls would have an undesirable impact on the local tax base. Those taxes are assessed in the same manner as other property, and taxes are paid to maintain local tax revenue streams. Many of the "in lieu" taxes imposed by the state, i.e., coal and oil industry taxes, were based on the recognition that a large project or facility has a much broader impact than the township and school district in which it is located. In these instances, the Legislative Assembly determined that simply applying a property tax was inadequate to address the needs of the impacted area, and a tax structure was established to allocate revenues to address needs of the impacted area and also to recognize that depletion of a state resource is cause for the state to receive a share of revenue for the benefit of all citizens of the state. In these cases the Legislative Assembly has provided that the taxes are "in lieu" of property taxes, and one component of the tax is providing revenue to political subdivisions in place of what a property tax would have provided but that does not mean the tax is a property tax. What the constitutional measure prohibits is levying of a tax on the assessed value of real or personal property, and this is the standard that must be applied to "in lieu" taxes to determine if the measure would eliminate the tax.

Mobile Home Taxes

Mobile homes may be taxed as real property if they are affixed to land or as personal property if they are not affixed to land. In either case, taxes on mobile homes would be eliminated because the property tax and the mobile home tax are based on the assessed value of the mobile home.

Special Assessments

It appears special assessments would not be eliminated by enactment of measure No. 2. The amount of special assessments against a property are not allowed by law to be based on the assessed value of the property but are required to be based on the property's "just proportion of the total cost of such work" and "not exceeding the benefits" to the property (Section 40-23-07).

It has been suggested that if measure No. 2 is approved, political subdivisions will be able to use special assessments to pay general obligation bonded indebtedness or provide funds for certain services of the political subdivision. There is no basis for this assumption under existing law. Special assessments are allowed to be used for certain types of improvements, specifically listed in statute. Payment of indebtedness (other than the special assessment project) and costs of operations of political subdivisions are not included in the listed purposes for special assessments. It is questionable whether bonds would be marketable and debt limits would be violated if special assessment laws were modified to permit levies for indebtedness or operating funds. Even if that is possible, there would be a huge shift in relative shares of the "tax" burden among property owners if assessed values are not allowed as a basis for spreading the burden, and benefits to each property must be determined. An additional problem is that special assessment debt is not considered "debt" for constitutional purposes under the special fund doctrine if the obligation is payable from revenue from property acquired or assessments on benefited property. It is uncertain whether that doctrine would be interpreted to apply to the suggested uses of special assessments.

Crew Housing Permit Fees

A city or county is permitted to impose crew housing permit fees for property that is not taxable as real property or mobile homes under existing law. Measure No. 2 would not directly affect crew housing permit fees because the statutory provision allows the fees to be determined on the basis of the value of services and facilities provided to the crew housing facility. To the extent any city or county uses assessed valuation in determining fees, that practice would be prohibited and would have to be changed.

Oil and Gas Taxes

The oil and gas gross production tax is a tax "in lieu" of property taxes (Section 57-51-03). One issue that may cause some interpretive problems is the

provision in Section 57-51-02.1, which provides that the gross production tax is a real property tax. However, the provision is limited by its own terms to interpretation of taxability of oil and gas from governmental lands if immunity from property taxes has been waived by Congress. The oil extraction tax does not contain the "in lieu" of property tax provision. It appears neither gross production nor extraction tax would be affected by measure No. 2 because neither tax is based on assessed value of property. The oil extraction tax and the gross production tax for oil are based on a percentage of the gross value at the well, which is generally the price of the oil under an arm's-length contract between the producer and purchaser or based on market value or posted price. Natural gas is taxed under the gross production tax based on a gas tax rate and gas base rate adjustment determined each year.

Coal Conversion Taxes

Coal conversion taxes would not be affected by enactment of measure No. 2 because the coal conversion tax is not based on assessed value of property. The coal conversion tax basis is the output capacity or gross receipts of the facility. The coal conversion tax is "in lieu of ad valorem taxes" on the facility, but the land on which a coal conversion facility is located is subject to property taxes (Section 57-60-06), which would be eliminated by enactment of measure No. 2.

Coal Severance Tax

The coal severance tax would not be affected by measure No. 2. The coal severance tax is stated by law to be "in lieu" of sales or use taxes, and there is no "in lieu" provision regarding property taxes. The coal severance tax is imposed at a specified number of cents per ton and is not based on assessed value of property.

Electric Generation, Distribution, and Transmission Taxes

Transmission line taxes for rural electric cooperatives are imposed in dollars per mile, with rates graduated as nominal operating voltage increases. It could be argued that increased voltage is a form of assessment of market value, but "assessment" of transmission lines is not required. Distribution lines of rural electric cooperatives are taxed at a rate of one dollar per megawatt-hour delivered to a consumer. Taxes on wind generators and gas generators of rural electric cooperatives are taxed based on generating capacity.

It appears none of these electric generation, distribution, and transmission taxes would be affected by measure No. 2. However, investor-owned utilities are subject to property taxes based on assessment and imposition by the State Board of Equalization under Chapter 57-06, and it appears clear that these property taxes would be eliminated by enactment of measure No. 2. A significant change in the

competitive position of rural electric cooperatives and investor-owned utilities would be created by enactment of measure No. 2.

Telecommunications Company Taxes

Telecommunications companies are subject to a gross receipts tax in lieu of property taxes. A gross receipts tax is not based on the assessed value of property. Telecommunications taxes would not be eliminated by enactment of measure No. 2. However, the tax is allocated among political subdivisions to replace property taxes that applied to the industry in 1997 so it is likely the industry might suggest to the Legislative Assembly that the tax should be reduced or eliminated if property taxes are eliminated.

Financial Institutions Taxes

Financial institutions taxes are income-based taxes, and financial institutions are also subject to property taxes. Property taxes would be eliminated, but the financial institutions tax would be unaffected by enactment of measure No. 2.

Payments in Lieu of Taxes for New or Expanding Businesses

A city or county may grant a new or expanding business the privilege of making payments in lieu of property taxes. No directive is provided by statute on how the payment is determined. These payments in lieu of taxes would not be eliminated by measure No. 2 except in the unlikely event they are based on assessed value.

Farmland or Ranchland Owned by Nonprofit Organizations for Conservation Purposes

Farmland or ranchland owned by nonprofit organizations for conservation purposes is subject to payments in lieu of taxes, and the nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes. This tax would be eliminated by measure No. 2, because it is based on assessed value of property.

Game and Fish Department Lands

The director of the Game and Fish Department must make annual payments to counties in which property is located which is controlled by the Game and Fish Department, not including leased land already subject to property taxes. The property subject to in lieu of tax payments must be assessed and valued for tax purposes, excluding improvements to property, and the mill levies are applied which apply to other taxable property in the taxing districts in which the property is located. These in lieu of tax payments would be eliminated by measure No. 2 because they are based on the assessed value of property.

National Guard Land

For land acquired for the National Guard training area and facility development trust fund, the Adjutant General shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in Chapter 57-02.1 for payments in lieu of real estate taxes by the director of the Game and Fish Department, but no county may receive less in payments for any property than the county received in real estate taxes for the last year in which the land was taxable. These in lieu of tax payments would be eliminated by measure No. 2 because they are based on the assessed value of property.

Land Owned by Board of University and School Lands or State Treasurer

Certain property owned by the Board of University and School Lands or by the State Treasurer as trustee for the state of North Dakota is subject to payments in lieu of taxes. All such property must be assessed in the same manner as other real property in the state is assessed for tax purposes, excluding improvements to the property. Payments in lieu of taxes are computed by extending the mill levies that apply to taxable property in the taxing districts in which the property is located. These payments would be eliminated by enactment of measure No. 2 because the taxes are based on the assessed value of property.

Forest Stewardship Tax

The owner of property with a growth of trees may obtain approval from the board of county commissioners to pay a forest stewardship tax of 50 cents per acre in lieu of the property taxes that would otherwise apply. This tax was established to provide reduced taxes to encourage growth and preservation of forested areas. However, because the reduced tax is not based on assessed value, it appears this tax would not be eliminated by measure No. 2.

Carbon Dioxide Pipelines

Carbon dioxide pipeline property is exempt from property taxes for the first 10 years after construction. During that time, the state makes payments in lieu of property taxes based on assessment by the State Board of Equalization and application of mill rates of taxing districts in which the pipeline is located. The property tax and the state payments in lieu of property taxes would be eliminated by enactment of measure No. 2.

Leases for Tourism or Concession Purposes

Property leased from the State Historical Society or the Parks and Recreation Department is subject to payment of a license fee in lieu of property taxes. The license fee is set by the director of the State Historical Society or Parks and Recreation Department at an

annual amount not less than \$1 and not more than 1 percent of the gross receipts of the tourism or concession enterprise. The license fee is paid to the treasurer of the county in which the enterprise is located. These license fees would not be affected by enactment of measure No. 2 because the fees are not based on assessed value of property.

Devils Lake Project Land

Land acquired by the State Water Commission for the Devils Lake project is subject to payments in lieu of real estate taxes to the counties in which the property is located. The property is assessed, and mill levies of local taxing districts are applied. These payments would be eliminated by enactment of measure No. 2.

Workforce Safety and Insurance Building

The building purchased by Workforce Safety and Insurance is subject to payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned. These payments would be eliminated by enactment of measure No. 2.

Motor Vehicle Registration Fees

Motor vehicle registration fees are in lieu of personal property taxes. These fees would not be eliminated by enactment of measure No. 2 because motor vehicle registration fees are based on weight and age of vehicles and not assessed value.

REPLACEMENT OF REVENUES

Revenues to political subdivisions that would be required to be replaced by the state under measure No. 2 are addressed in Section 2 of measure No. 2. Section 2 contains three subsections, each of which is worded differently and apparently intended to address another aspect of revenue replacement.

Subsection 1 of Section 2 of measure No. 2 provides:

Taxes upon real property which were used before 2012 to fund the operations of counties, cities, townships, school districts, park districts, water districts, irrigation districts, fire protection districts, soil conservation districts, and other political subdivisions with authority to levy property taxes must be replaced with revenues from the proceeds of state sales taxes, individual and corporate income taxes, oil and gas production and extraction taxes, tobacco taxes, lottery revenues, financial institutions taxes, and other state resources.

Several of the words and phrases in subsection 1 appear to be the key to determining how it would be applied.

"Taxes upon real property" limits the replacement funding to consideration of real property taxes imposed by the political subdivision. Whether intentional or not, this excludes mobile home taxes because they are not taxes upon "real property." It

appears likely this interpretation would apply to replacement of "in lieu" taxes that would be eliminated by enacted of measure No. 2, as discussed previously in this memorandum.

"Used" is distinctive because this word was employed by the drafter rather than the word "levied." Because the word "levied" was not employed, it appears the intention was to focus the replacement requirement on the expenditures made from property tax revenues by the political subdivision. That this would be a reasonable interpretation is supported by the recognition that the drafter could well have intended not to replace property tax revenues that were set aside, such as in a building fund or interim fund, and focus attention on only expenditures that were made in the "operations of" political subdivisions.

"Before 2012" is a phrase that is somewhat puzzling. Taken literally, it could include any year from 1861 through 2011. It appears most likely this phrase must be interpreted to refer to calendar year 2011.

"Replaced" is a word of debatable meaning. Dictionary definitions indicate the word is used in several senses. In some senses it appears to mean "take the place of," which would not require "equivalency," and in some senses it means to "pay back" or "restore," which would require equivalent substitution. It appears the safest assumption until the issue is decided by a court is to assume the measure requires the state to provide dollar-for-dollar replacement.

Using these interpretations, it appears subsection 1 establishes a "baseline" of replacement revenue from the state to political subdivisions that would be the 2011 calendar year expenditures from real property tax revenues of the political subdivision and certain in lieu of tax revenues.

Subsection 2 of Section 2 of measure No. 2 provides:

The legislative assembly shall direct as much oil and gas production and extraction tax, tobacco tax, lottery revenue, and financial institutions tax as necessary to fund the share of elementary and secondary education not funded through state revenue sources before 2012. The state cannot condition the expenditure of this portion of elementary and secondary education funding in any manner and school boards have sole discretion in how to allocate the expenditure of this portion of the elementary and secondary funding provided.

Subsection 2 is difficult to interpret because of the language employed. "The share of elementary and secondary education not funded through state revenue sources" could be interpreted to require the state to fund the share of education funded through federal sources, which presumably does not need to be replaced because it will continue to be supplied to school districts. In examining the *2011 School Finance Facts* publication of the Superintendent of Public Instruction, it appears that 2011 school district revenues in the state totaled \$1,129,563,160. In very

rough percentages, state sources made up about 50 percent, local sources about 30 percent, and federal sources about 20 percent of statewide education funding. School district property tax revenues and in lieu of tax payments totaled slightly less than 25 percent of total revenues. Because the purpose of measure No. 2 is to eliminate and replace funding for property taxes, there is an attraction to simply interpreting subsection 2 as requiring replacement of property taxes levied by school districts. However, it is not clear that the language of the subsection is capable of that interpretation. If this subsection is interpreted to require replacement of school district property taxes, it would be very nearly a redundancy of the subsection 1 requirement for school districts.

Subsection 3 of Section 2 of measure No. 2 provides:

The legislative assembly shall direct a share of sales taxes, individual and corporate income taxes, insurance premium taxes, alcoholic beverage taxes, mineral leasing fees, and gaming taxes and any oil and gas production and extraction taxes, tobacco taxes, lottery revenues, and financial institutions taxes not allocated to elementary and secondary schools to counties, cities, and other political subdivisions according to a formula devised by the legislative assembly to fully and properly fund the legally imposed obligations of the counties, cities, townships, and other political subdivisions. The allocation of the amount determined by the legislative assembly must be provided to the governing bodies of counties, cities, townships, and other political subdivisions. How counties, cities, townships, and other political subdivisions choose to allocate the expenditures of this revenue is at the sole direction of the governing bodies of counties, cities, townships and other political subdivisions.

Subsection 3 requires the Legislative Assembly to allocate a share of state taxes according to a "formula devised by the Legislative Assembly to fully and properly fund the legally imposed obligations" of political subdivisions. It appears there is little room for argument that this requirement places discretion in the Legislative Assembly to determine what level of funding is "proper."

Taken as a whole, Section 2 of measure No. 2 appears to:

1. Establish a "baseline" funding level equal to political subdivision expenditures from real property taxes equal to the amount expended by each political subdivision during 2011. No growth factor is included in the measure for this allocation.
2. Require allocation of approximately 25 percent of the cost of education among school districts in the state. Because this requirement is

expressed as a "share," it will be subject to growth as the cost of education increases.

3. After the funding requirements of subsections 1 and 2 have been met, the Legislative Assembly will have to make the determination of what additional level of funding is proper.

It should be noted that the only funding to school districts required by measure No. 2 is to fund the share of education not funded through state revenue sources. This does not appear to mandate that the Legislative Assembly maintain the same levels of funding to school districts that it maintained in 2011.

ADDITIONAL COMMITTEE QUESTIONS

How Will "Market Value" of Property Be Determined for Purposes of Constitutional Debt Limits?

This is one of the questions that will have to be answered by the Legislative Assembly if measure No. 2 is enacted. Market value is not defined by the measure or by statute, except as one component of determining "true and full value," and even if it is interpreted as equivalent to "true and full" value, market value for agricultural property is clearly not the value determined by the productivity valuation formula.

Does "Market Value of All of the Property in the State" Make It Necessary to Determine Market Value for Personal Property?

This will have to be interpreted by the Legislative Assembly. It appears that the word "taxable" was removed by the drafters of measure No. 2 because upon enactment there will no longer be "taxable" property. However, removal of the word "taxable" leaves the word "property" standing alone, which includes all property. The plain language of the provision appears to require determination of market value of real and personal property, and the measure does not appear to allow any discretion for the Legislative Assembly to exclude any kind of personal property. Literal application of this language would result in an enormous expansion of assessment responsibilities, costs, and intrusion into what citizens have deemed to be outside the reach of governmental inquiries. This expansion of assessment would serve only the limited purpose of determining debt limits for the state and political subdivisions. Perhaps a means could be devised to "impute" value of personal property.

What Effect Does Changing True and Full Value to Market Value of All Property as the Basis for Limitation Have on the State Debt Limit?

The change increases the state's limitation of indebtedness, but Section 13, Article X, of the Constitution of North Dakota, would still limit state general obligation bonded debt to \$2 million. For the

purpose of promoting generation and transmission enterprises, the state may issue a combination of bonds that, added to outstanding general obligation debts, will not exceed 5 percent of the market value of all of the property in the state, which would be an increased debt limit.

Does Political Subdivision Bonding Capacity Increase if the Basis of the Constitutional Limitation Is Changed From Assessed Value of Taxable Property to Market Value of Property?

The debt limitation for political subdivisions would be substantially increased by the initiated measure because market value is approximately twice the amount of assessed value and because valuation of personal property would become part of the limit. This question may be largely academic because the Legislative Assembly will be forced to rewrite statutory provisions on political subdivisions incurring indebtedness and would be free to establish lower limits than the constitutional provision would contain.

May Political Subdivisions Issue General Obligation Bonds if Property Taxes May Not Be Levied?

Political subdivisions would be without authority to issue general obligation bonds without legislative changes to statutory authority. Under Section 21-03-15, a political subdivision issuing general obligation bonds is required to levy an annual property tax to retire the indebtedness. Beginning on the effective date of measure No. 2, general obligation bonds could not be issued.

May the Legislative Assembly Require Special Assessment Debt to Be Included in Calculating Debt Limits of Political Subdivisions?

No, the North Dakota Supreme Court has adopted the "special fund doctrine" under which special assessment debt is not considered "debt" for purposes of the constitutional debt limit for political subdivisions.

Will Political Subdivisions Need Legislative Approval Before Issuing Debt?

It does not appear legislative approval would be required under current statutory provisions for issuing certificates of indebtedness or warrants, but legislative approval would be required for issuance of general obligation bonds. The form of legislative approval could range from enactment of statutory authority providing a standard procedure and funding mechanism or by requiring legislative approval of bond issues on a case-by-case basis.

Would a Home Rule City or County Be Prohibited From Using Home Rule Sales Taxes or Other Tax Revenues for Payment for Bonded Indebtedness?

No, if the bonds are marketable with that backing.

May Political Subdivisions Use Anticipated State Revenues to Pay for Retirement of Indebtedness?

Yes, if the debt is marketable with that backing. For general obligation bonds, existing statutory provisions would have to be revised by legislation to allow state revenues to be used as a funding source.

Will Property Tax and Budget Statutes of Political Subdivisions Become Void?

Statutory provisions governing property tax levies and levy limitations would be void. Statutory provisions governing political subdivisions' budgeting would undoubtedly be rewritten by the Legislative Assembly. However, unless a special legislative session is held in 2012, enactment of measure No. 2 would mean 2012 political subdivision budgets are unlimited.

May a County Obtain Property Through Tax Foreclosure if Property Taxes Were Due and Unpaid Before the Effective Date of Measure No. 2?

Yes, it appears the obligation to pay and the remedies for nonpayment for any property taxes for 2011 or earlier would remain effective.

What Effect Will Measure No. 2 Have on the Ability of Political Subdivisions to Consolidate?

It appears measure No. 2 would not discourage consolidation of political subdivisions.

Does Measure No. 2 Limit the Legislative Assembly's Ability to Consolidate Services Between Counties?

It appears measure No. 2 would not affect the Legislative Assembly's prerogative to require or allow consolidation of services between counties.

Does Measure No. 2 Limit the Legislative Assembly's Ability to Consolidate School Districts or Consolidate All School Districts Into One School District?

It appears measure No. 2 would have no impact on the Legislative Assembly's prerogative to require or allow consolidation of school districts.

What Effect Will Measure No. 2 Have on Tax Increment Financing?

Measure No. 2 will have an uncertain impact for tax increment financing. Measure No. 2 requires the

Legislative Assembly to "replace" or "fully and properly fund" property taxes that would be eliminated by the measure. The premise of tax increment financing is that there will be a growth in valuation which will generate a stream of increased property tax revenue that will pay for indebtedness incurred for the project. Measure No. 2 does not appear to require the Legislative Assembly to provide increased replacement revenue on the basis of increased property valuation. It is questionable whether tax increment financing will remain a viable property development option if property taxes are eliminated.

**If Local Governments Can No Longer
Levy for an Emergency Fund, May the
Legislative Assembly Provide Revenues
for Each Political Subdivision to Be Held in
Reserve for Emergency Needs?**

It would be within the prerogatives of the Legislative Assembly to provide funding to political subdivisions for an emergency fund, but it is not clear if those allocations would be required by the measure.

ATTACH:1