

**2017 HOUSE FINANCE AND TAXATION**

**HB 1368**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1368  
1/30/2017  
27572

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*May Bruecker*

## Explanation or reason for introduction of bill/resolution:

A bill related to county board of equalization appeals of state board of equalization proceedings.

## Minutes:

Attachment 1-4

**Chairman Headland:** Opened hearing on HB 1368.

**Representative Longmuir:** Introduced bill. Distributed testimony. See attachment #1. Ended testimony at 2:38.

**Chairman Headland:** Is there support for HB 1368?

**Lori Hanson, Mountrail County Tax Equalization Director:** Distributed testimony. See attachment #2. Ended testimony at 7:53.

**Chairman Headland:** You indicate you don't have the ability to go to district court now?

**Lori Hanson:** Not as a political subdivision, only as a taxpayer.

**Chairman Headland:** Are there any questions? Further testimony in support?

**Wade Enget, State's Attorney of Mountrail County:** Distributed testimony. See attachment #3. Ended testimony at 12:30.

**Chairman Headland:** If we were to pass this bill would we have a need for a State Board of Equalization?

**Wade Enget:** Yes. The State Board of Equalization still makes decisions. We're not changing the fact that the decision is regularly done, it would just be a review under an existing law to see if it's arbitrary, capricious, or not based upon the rule of law.

**Chairman Headland:** Are there any questions?

**Representative Hogan:** How many appeals are you making on property tax assessment and how common is it? Of those appeals you've made to the State Board of Equalization what percentage do you think you might appeal to district court?

**Wade Enget:** This would be the only one we've ever done.

**Representative Trottier:** Would there have been sales tax paid on things like the loading arms or any other property that is trying to be claimed as personal property?

**Wade Enget:** It depends on where it was purchased; if it was purchased out of state and brought in. Mountrail County is not a home rule county so we wouldn't have a use tax that we would have collected.

**Chairman Headland:** Is there further testimony in support?

**Daryl Dukart, Dunn County Commissioner, chairman of the Western Dakota Energy Association, and Visions West North Dakota:** Distributed testimony. See attachment #4. Ended testimony at 18:13.

**Chairman Headland:** Every time you have a disagreement with the valuation are we going to end up in court?

**Daryl Dukart:** I don't think so. When these happen I think we have the opportunity to go to the state and have them re-evaluate or have the companies that are doing the self-certification give the real reasons. We are just handed this and we have to go with it.

**Chairman Headland:** Are there any questions? Is there further support? Is there any opposition? Are there any questions for the Tax Department?

**Representative Steiner:** Are these companies that self-certify under the category of less than five so you can't find out what incentives they had or what was their valuation? Sometimes if they've been given a tax break and they fall under that less than five category you can't find out the valuation of that plant.

**Dee Wald, General Counsel:** The less than five does not apply to this situation. For the most part it is open record.

**Linda Leadbetter, State Supervisor of Assessments, Office of State Tax Commissioner:** These companies do not self-certify. The companies are required to file reports then they are analyzed as they are in other states for central assessments. Centrally assessed property is reviewed by the State Board of Equalization because it crosses jurisdiction of lines. There is a great deal of detail that is involved with this. Our division has reported the processes at local meetings and will also have a presentation at the North Dakota Assessing Officers Association meeting in February. It is non self-certified, it is a process of the State Board of Equalization.

**Chairman Headland:** Does every county across the state use somebody who has the proper training to do assessments of these large projects? Are they all educated the same way?

**Linda Leadbetter:** There is a certification requirement for all assessors in the state of North Dakota. The determination is made at the local level.

**Chairman Headland:** Do we really want to put ourselves in a situation where one assessor claims what he thinks is personal property another might claim is real property? Who is the best today to make that evaluation, the State Board of Equalization?

**Linda Leadbetter:** I would like to explain the process of the State Board of Equalization. Everything is managed at the local level. It is first handled at the local level whether it's a city or a township Board of Equalization. They have an opportunity as that property owner to be heard and appeal their assessment at the local level. It then goes to the county for them to hear that information and then they have an opportunity to appeal that. Often times at the State Board we have an opportunity to hear things that the local level doesn't want to deal with so we are handling some of the unpleasant situations as well. At the State Board individuals have the ability to appeal their assessment. The property owner has three different levels to appeal. If an individual comes to the State Board of Equalization to appeal their assessment on their home and their assessment was reduced, then we charge from the State Board of Equalization that assessment official to look at all like properties. The inequity can happen. It is a process that is always handled the same whether it's a large plant or a small plant. The owner is given that opportunity to appeal to court after that but we already heard that information at three elected governing bodies so it would be very difficult to see the need to bring it to district court.

**Chairman Headland:** Who would defend the State Board of Equalization in district court?

**Linda Leadbetter:** I would suspect it would be our special counsel for the Tax Department which they serve as the special attorney generals.

**Dee Wald:** We've been appointed by the Attorney General to represent the State Board of Equalization so there would be three of us.

**Chairman Headland:** You would currently have to defend your decision against a private business. What kind of budget do you have at your disposal if you're defending every county decision now?

**Dee Wald:** Linda mentioned there were 45 but that was reduced to 10 that had been reduced by the State Board. To go all the way to the Supreme Court it is going to take a year and a half so we'll be very busy.

**Chairman Headland:** Are there any other questions? Closed hearing.

Committee discussion:

**Chairman Headland:** I'm struggling with the idea that we have to have another level of approval.

**Representative Steiner:** I'm very familiar with this. It worries me that you have companies that see a downturn then they go to the state and the property may be worth what it is or it's not. They didn't get into this situation until the downturn in oil in Mountrail County. I think it's a fairness to the taxpayers because their school district received so much less revenue because the State Board came in over the top of them. It doesn't bother me if the state has to pay a little to get to the bottom of what that property is actually worth. Why should we make those taxpayers in Mountrail County pay more if it's wrong? We need current case law. I support what they're doing.

**Chairman Headland:** I don't have the information as to why the State Board of Equalization would have agreed with the taxpayer over the county if there wasn't some rationale to suggest that it should happen.

**Representative Trottier:** I talked to Linda Leadbetter in trying to put it in a relationship to a farm. It looks like they are trying to put property tax on that equipment like the loading arm. If you take the loading arm out of there all you have is a building but when you put the loading arm in it's a business. I was all for it when I first read it but it makes sense now. If sales tax is put on, then it's not real property and its personal property tax.

**Representative Hogan:** I was interested to hear there were 45 appeals and they were reduced to ten. I don't know how many of those ten would be appealed. Can we ask the Tax Department for this information?

Linda Leadbetter will get this information.

**Representative Steiner:** One of the arguments with the arm was if they could move it but there are no plans to move the arm. I disagreed with the State Board of Equalization on their decision.

**Representative Ertelt:** Their complaint is the determination by the State Board of what is real property or not. It's in the definition of what is real property. I don't know that this bill is necessarily addressing that concern. They are just shifting it to a district court in determining what the real property is or not. It is not the case that property is what it's worth regardless of when it is assessed. The values of them change based on the market. If there is little demand for the use of something in industry, then it's value is going to decrease.

**Chairman Headland:** Is there any further discussion? I don't know what the fix would be; we're going to give them the authority or we're not.

**Representative Hogan:** I think the issue is what is the cost and benefit. We could use current definitions and court rulings. It sounds like some of these precedencies are based on court actions that are very old. It might change the whole definition process.

**Chairman Headland:** We've asked for some information so as soon as we can get that information we can discuss further.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1368  
1/30/2017  
27610

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Brueker*

## Explanation or reason for introduction of bill/resolution:

A bill relating to county board of equalization appeals of state board of equalization proceedings.

## Minutes:

Attachment 1

**Chairman Headland:** We have asked for some information and Linda Leadbetter has provided that. I've given it to Dee and she will go over it with us.

**Dee Wald, General Counsel for the Office of State Tax Commissioner:** Distributed 2016 investigations by county. See attachment #1. This is a list of protests and adjustments the State Board had to make this year to property. There are two types of assessments processes that the State Board goes through; one, the Board is required to equalize property throughout the state. In order to achieve that goal, we use a sales ratio study. If a county, for commercial property, is 10% and 90% at the true and full value then we increase it up to 93 percent. If they value that property more than 100% we have to reduce that property. That is done for classifications of property; residential, commercial, and ag. Then you have appeals by taxpayers within a county regarding their valuations. Dee went through the handout county by county.

**Chairman Headland:** It raised the assessment but it didn't necessarily raise the taxes because that was still a decision made locally, right?

**Dee Wald:** No. Look at page two of the bill. Once a state board orders a county to reduce a class of property or increase a class of property the county auditor shall adjust the property to comply with any directives by the State Board. Dee continued to review the handout.

**Chairman Headland:** Why isn't Mountrail County on here?

**Dee Wald:** It's for 2015. After Plains Marketing and Mountrail County had an ongoing dispute since the 2013 assessment year. This year the Mountrail County assessor assessed the property using the methodology and analysis that we did so Plains Marketing didn't have anything to appeal. In 2015 they were fine.

**Representative Ertelt:** Are these the appeals we're looking at?

**Dee Wald:** These are the appeals for the individual landowners and the adjustments the State Board had to make to classification of property within each county.

**Representative Ertelt:** So it's more than just the appeals? Who is asking you to make the adjustments?

**Dee Wald:** The constitution requires that the land be equalized and the State Board has been tasked with that duty. Within classes of property that 10% for Adams County was within the tolerance for all commercial property within the state.

**Representative Ertelt:** When you're reducing the value there is a certain limit that can be over the full and true value then on the bottom side what are the ranges?

**Dee Wald:** It's 93-100% of fair market value. If they are over 100% we bring them down to 100% and if they're below 93% then we bring them up to 90 percent.

**Chairman Headland:** The State Board of Equalization didn't make any change with any of these individuals that appealed because there are Xs on them so you agreed with the county?

**Dee Wald:** That is correct.

**Vice Chairman Dockter:** Do you see this having to add FTEs in the Tax Department if this would pass?

**Dee Wald:** I don't know. It depends on how many counties start appealing. I know we would be busy if all of them were reduced.

**Chairman Headland:** Is it safe to assume that none of these individuals appealed to the court?

**Dee Wald:** I don't know what the individuals did after the State Board met, that is just between the counties and the individual. The individual has to file a lawsuit and the tax abatement proceedings then they go through the process.

**Chairman Headland:** Has it always been the case that there has been nowhere to go for a county beyond the state board?

**Dee Wald:** Yes. When it comes to the equalization of property the Supreme Court has said that the state board is the final determinant of that unless the board acts arbitrary, capricious, and unreasonable. I've yet to find a case where the Supreme Court has found them to be unreasonable or arbitrary.

**Representative Mitskog:** Is there an audit done to make sure they are complying with the 90 percent and that ratio?

**Dee Wald:** The counties have to provide their sales ratio studies to the Tax Department. We review each of them. If a county is so below because they are so behind the state board gives them lenience in time to try and get the new assessments and try to revalue to get it up to date. They will not just increase to 50 percent. We understand that in some of the smaller localities the assessor doesn't have the time or the resources to value every house in the county so we give them time.

**Representative Olson:** In the case of Plains Marketing versus Mountrail County, why was the valuation different?

**Dee Wald:** In 2013 we had performed an onsite inspection. We analyzed it within the statutory definitions and requirements, the state board determined what was real and personal in 2013. Mountrail County decreased the value but then went to court with omitted property statute. They said it wasn't really taxed in the amount because they took the personal property so they used the omitted property statutes to put it back on even though it was assessed. Mountrail County lost that case. In 2014 they had a Pickett evaluation done. He takes Texas law as to what is real versus personal property, applies that to the terminal, and then in 2014 they added that personal property back on again. Plains Marketing appealed again to the state board and they said they had to take that widget off the assessment. Mountrail followed the board's directive and reduced the value. In 2015 the state board again, using the same documents and the same reasoning, said their mind hadn't changed. They then sued the state board asking the court to order them to put it back on.

**Representative Olson:** Maybe the real disagreement isn't over the ruling as it is the definition of personal property. Maybe it would have been better for them to introduce a bill that more clearly defined what is or isn't personal property and maybe make it more like Texas.

**Dee Wald:** Prior to session we researched to see what could be done. Every state has something similar to ours. It is determined on a case by case basis. It probably won't help to change the definition of real versus personal.

**Representative Ertelt:** You said the counties or political subdivisions can bring action to district court if it's brought on the grounds of arbitrary, capricious, or not based on rule of law?

**Dee Wald:** That is correct.

**Representative Hogan:** Do we have other situations where there are major disputes between the local political jurisdiction and the department or is this a single incident?

**Dee Wald:** Mountrail County is the driving force behind this bill. That is yet to be seen, we don't know.

**Representative Steiner:** What's the training level difference between Pickett and the state's officer who goes out there? Are they equally trained? Do you feel the assessments are equal? One of the charges of Mountrail County is that the Pickett evaluation is closer to what the industrial value is really worth.



**Dee Wald:** The industrial value isn't necessarily the true and full value of a piece of property. Our staff are very well trained in North Dakota law.

**Representative Steiner:** One of Mountrail County's concern is that is the reason they hired Pickett because he had the experience with this type of equipment. You're talking about an oil loading facility. If we don't have any case law on the value of that and they claim your assessor is not as well trained as this national assessor, if you don't have that level of training then how can you make a fair assessment of that?

**Dee Wald:** That particular issue is a matter of opinion. Our staff knows what they're doing when it comes to industrial property. We've been appraising industrial property for years. I don't know what else to tell you. We have great staff.

**Representative Hatlestad:** You said Mountrail County brought the lawsuit.

**Dee Wald:** The first lawsuit Plains Marketing brought against Mountrail County. This most recent one Mountrail County sued the State Board of Equalization under a writ of mandamus action.

**Representative Hatlestad:** So they're appealing the decision of the State Board?

**Dee Wald:** They were told to do it. That is what a writ of mandamus is. A court can't substitute its judgement for that of a State Board of Equalization. The discretionary act wasn't for any duty to count the money or to collect returns, it was something they used as their discretion.

**Chairman Headland:** So we don't have anybody qualified in the state to assess commercial industrial property? Why are they going to Texas unless they're looking for a specific answer?

**Dee Wald:** I think it is difficult for the local assessors so they go out and hire an expert to do that.

**Chairman Headland:** Is there anything else? Does anybody have any ideas?

**Representative Olson: MADE A MOTION FOR A DO NOT PASS**

**Representative B. Koppelman: SECONDED**

**Chairman Headland:** Further discussion.

**Representative Olson:** I think there has to be a more creative way to deal with some of these disagreements. Now we have courts who have to judge what are true and proper valuation. There's already a remedy to appeal arbitrary or capricious decisions so if the state board is clearly acting out of line then the courts would tell them to fix it but they shouldn't have to determine what the value is.

**Representative Ertelt:** There is a question of rightfully assessing commercial property. This isn't the first time we've had oil in the state so we've had equipment here before. I'm not too concerned with our ability in the state to assess properly.

**Representative Olson:** If our problem is definition of property then that is probably what needs to be changed.

**Chairman Headland:** Our definition of personal property has worked well in the past. If there is just one instance where somebody disagrees I think by making changes you might open up a can of worms that may have some ramifications for other industries.

**Representative Hatlestad:** I think the courts have been making decisions for years. Maybe they didn't have the expertise needed in some cases thus they were repealed beyond that. I think the county should have some place to go if they feel it was wronged but not as serious a degree as what the Tax Department said but they should have the ability to appeal.

**ROLL CALL VOTE: 9 YES 5 NO 0 ABSENT**

**MOTION CARRIED FOR A DO NOT PASS**

**Representative Olson will carry this bill.**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1368  
2/1/2017  
27757

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Bucken*

## Explanation or reason for introduction of bill/resolution:

A bill relating to county board of equalization appeals of state board of equalization proceedings.

## Minutes:

No attachments

**Chairman Headland:** In order to start the process someone will have to make a motion for reconsideration.

**Representative Hatlestad: MADE MOTION TO RECONSIDER**

**Representative Steiner: SECONDED**

**VOICE VOTE: MOTION CARRIED TO RECONSIDER**

**Representative Olson:** We're considering to modify the bill to allow the county board to appeal the decision by the state board to the district court but putting a sunset on the bill. We need to determine a sunset date. In discussing the ruling of what has occurred, it appears the state board is ruling properly according to the law and court precedent. The rail loading facilities for oil have never been brought before a court to adjudicate on the definition of whether it's real property or personal property. I think the state board is in a situation where they are ruling appropriately based on court precedent but that's the whole problem. We need to find a way to get this before somebody to look at it and make a determination that is fresh and based on modern methods and modern industry. I think we need to let this bill go forward to allow the testing to happen at the court level to decide whether or not it needs to be adjusted then the situation will be decided permanently going forward. There will then be further opportunity for counties to get in and we won't be opening up Pandora's box.

**Representative B. Koppelman:** Can you share with the committee what the precedent is that you're referring to? It seems you think that precedent out there is bad precedent so can you tell us what that bad precedent was?

**Representative Olson:** The precedent is agricultural facilities in determining what is real property and what is personal property. When you're trying to determine this you have statute

that defines it but that is subject to interpretation and how important that property is to the value of the facility itself on its own. The law can't capture every possible scenario. Combined with that you have court rulings. To my knowledge there has not been an oil loading facility that has been looked at outside of existing statute and existing court cases. Short of defining personal property there's really no way to get to the bottom of this.

**Representative B. Koppelman:** What is stopping the Board of Equalization from looking at this as if they are the same? Do they need us to get the court involved to allow them to discuss the similarities and differences? By opening this up are we saying we think they are wrong and we think it should be real estate? If we open this up with a very narrow window of time with the intent of having this go to court, it's almost like we're saying we think that oil loading facilities should be taxed, aren't we?

**Representative Olson:** I don't think we're saying that. I think we're saying both sides have merits which need to be decided but they can't be decided because there is no higher appeal. Short of them appealing to us to change definitions I think there needs to be a level of appeal that doesn't presently exist for the counties. In this case, I'm concerned the property isn't being assessed at the proper value and everybody else in the county is going to be picking up the slack on that property. How do we figure out who is right? I think this is a way to get that done and get it out of the way.

**Representative Ertelt:** Our state law says the State Board of Equalization is final so the counties can't go to district court. The Supreme Court of North Dakota will not hear the case either because they haven't appealed it to the district court. Is there any recourse that the counties have to appeal at court?

**Dee Wald, General Counsel, Office of State Tax Commissioner:** No. The only time there is a direct appeal is if the county increased the assessment, increased the value, and the taxpayer appealed whether it be at the township, city, board of equalization, and to the county. Then they lost their appeal, went to the State Board of Equalization, lost their appeal there, so they were valued at the higher. Then they can go back and file abatement proceedings and that would be filed against the county. That is the only time there would be any kind of lawsuit I think.

**Representative Ertelt:** It's only the entity being taxed that has that?

**Dee Wald:** That is correct.

**Representative Olson:** If somebody is being taxed too much they can appeal it all the way to the courts so they are being taxed fairly. This is really the same situation but reversed; if another entity isn't being taxed appropriately then there is no way to deal with that.

**Representative B. Koppelman:** I see this as either the county should have appealing ability to the court or they shouldn't. I don't see the advantage of cherry picking it for this one scenario even if we believe this oil structure should be taxed. I think our best approach is to rewrite the policy that defines what is taxed and not to leave a court proceeding for one scenario and quickly sunset before anyone else has the same due process rights.

**Representative Hogan:** I like the idea of the sunset. If we sunset it, we would have two-year window to see how many situations and we could see the appealable issues.

**Representative B. Koppelman:** I think we call that a legislative study. If that is the goal to find out if the law is right for defining personal property and real estate, then I might support that. Otherwise, I see this as being a narrow window to cherry pick.

**Representative Olson:** MADE A MOTION TO AMEND WITH ADDING A SUNSET OF JUNE 30, 2019.

**Representative Steiner:** SECONDED

**Chairman Headland:** Are there any questions?

**Representative Olson:** I think with the sunset we will be able to find out pretty quickly if there is an issue with abuse by counties or tying up of resources then we can decide to let it go or keep it. Any proceedings that occur within the court system would be great information to have as part of that study.

**Chairman Headland:** I don't want the study because it would just be a mechanism to expand what is going to be taxed. Any other discussion?

**Dee Wald:** The only question we have on the bill now and the sunset is how far back can appeals go? Do they have three years?

**Chairman Headland:** What does the process allow for now in cases if it's by a property owner?

**Dee Wald:** I'm not sure; a year or year and a half. I can find out.

**Representative Olson:** The intent of this is only going forward. I don't want anything retroactive to a previous case it would have to be cases going forward.

**Chairman Headland:** Do we need specific language in the sunset to address that?

**Dee Wald:** Yes. I propose this act is effective for taxable years beginning after December 31, 2016 because we're trying to get the 2017 state board action.

**Representative Steiner:** In Mountrail County's case to really determine whether or not what happened was fair, would we want them to be able to take that to district court from the 2014 challenge? Does it affect them where they cannot challenge it now in 2017? If that's the case, then they really can't do what Representative Olson was saying that they can find out if the courts can set precedence.

**Dee Wald:** That is what I'm trying to get a handle on, if they can go back to 2014 or if it's just a perspective assessment.

**Chairman Headland:** Would it be better if we have the sunset between that time so it is narrowing it down to somebody who has already been to the county board of equalization in which the county is disagreeing?

**Dee Wald:** You could put the effective date for assessments made after June 30, 2016 so they could appeal 2016.

**Chairman Headland:** Do you have to state the end of it?

**Dee Wald:** If you want to limit it to just 2016 you'd have to put the end date on it too.

**Chairman Headland:** We're really narrowing it down.

**Representative B. Koppelman:** I was under the impression that the county hadn't gotten the money they wanted out of them for the last couple years and they just got the new assessment and they don't want it to happen for another year. Are we talking about going back and saying the money they paid last year that wasn't enough so they could go back and get more?

**Representative Ertelt:** Do we have definitions of real and personal? Do we specify certain things?

**Dee Wald:** It doesn't specify certain things; it provides guidelines then you apply the law to the facts of the situation.

**Representative Hogan:** Could it be taxable years 2016 to 2018 so when we're in 2019 we would know what the appeals were?

**Dee Wald:** Assuming everything goes cleanly, I believe there would just be one case that would make it through to the Supreme Court.

**Representative Hogan:** Even if it's not completed they would have the right to appeal.

**Dee Wald:** Even though its filed it might not be completed.

**Representative Hogan:** And what types of case and what are the issues?

**Representative Olson:** Question called to bring the amendment to a vote by adding the sunset only.

**Chairman Headland:** The question has been called.

**ROLL CALL VOTE ON AMENDMENT 12 YES 2 NO 0 ABSENT**

**MOTION CARRIED TO ADOPT AMENDMENT**

**Representative Olson: MADE A MOTION FOR A DO PASS AS AMENDED**

**Representative Steiner: SECONDED**

**Representative B. Koppelman:** I find it a little peculiar that the policy making branch is writing a bill to ask the Supreme Court what their opinion is of something we refused to define. I'm going to resist the do pass.

**Representative Ertelt:** That is my same hesitation. We may be in a situation where we should be defining in law and we are advocating that authority to the judicial branch and I don't want to do it.

**Representative Olson:** I don't think we have the information we need. There are a lot of loose ends. We have to allow the courts to decide what is the opinion of the legislative intent. We have intent in the language which can be interpreted different ways and we can't legislate every possible interpretation that comes up. If the courts start to rule in ways we find objectionable we would certainly be within our rights to codify those areas.

**Representative Schobinger:** It seems to me that the taxpayers have at least three layers of appeal. The process works like it's supposed to where the state is the final decider. I'll reject the do pass motion.

**Representative Trottier:** There's been a lot of individuals, townships, and counties that have come to the state and lost. By law they then have to drop it. We are dealing with just one county here that has a problem. I struggle with passing a law to deal with one issue.

**Chairman Headland:** I'm going to resist the do pass as well. I think the legislative intent is clear that the State Board of Equalization is the judge in this case.

**Representative Steiner:** I think the loser in this is the taxpayer. We have to fix this for the taxpayer because they pick up the slack if the state board makes an error. The problem I see is that there isn't current case law and the only way to get current case law is to go forward. You will know then in a couple years that the courts have decided it wasn't arbitrary, capricious, or unreasonable. It should also put the State Board of Equalization on alert that their training is perhaps insufficient if there are significant challenges by people who are trained in industrial oil field equipment. I don't know how you could say that an agriculture processing plant in Traill County is equivalent to an oil loading facility. If you don't want to fight for their taxpayers that's your vote.

**Chairman Headland:** Anything else?

**ROLL CALL VOTE: 5 YES 9 NO 0 ABSENT**

**MOTION FAILED FOR A DO PASS AS AMENDED**

**Representative B. Koppelman: MADE A MOTION FOR A DO NOT PASS AS AMENDED**

**Vice Chairman Dockter: SECONDED**

**Chairman Headland:** Further discussion?

**ROLL CALL VOTE: 9 YES 5 NO 0 ABSENT**

**MOTION CARRIED FOR A DO PASS AS AMENDED**

**Representative B. Koppelman will carry this bill.**



17.0932.01001  
Title.02000

Adopted by the Finance and Taxation  
Committee

February 1, 2017

2/1/17 DA

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1368

Page 1, line 3, after "proceedings" insert "; and to provide an expiration date"

Page 2, after line 11, insert:

**"SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2019,  
and after that date is ineffective."

Renumber accordingly

Date: 1-30-17  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1368**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Olson Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan		✓
Vice Chairman Dockter	✓		Representative Mitskog		✓
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓	✓			
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓	✓			
Representative Trottier		✓			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Olson

If the vote is on an amendment, briefly indicate intent:

Date: 2-1-17  
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1368

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider *Do Not Pass*     \_\_\_\_\_

Motion Made By Rep. Hatlestad Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland			Representative Hogan		
Vice Chairman Dockter			Representative Mitskog		
Representative Ertelt					
Representative Grueneich					
Representative Hatlestad					
Representative Howe					
Representative Koppelman					
Representative Olson					
Representative Schobinger					
Representative Steiner					
Representative Toman					
Representative Trottier					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice vote: Motion Carried.

Date: 2-1-17  
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1368**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: add sunset of June 30, 2019

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Olson    Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger		✓			
Representative Steiner	✓				
Representative Toman		✓			
Representative Trottier	✓				

Total (Yes) 12    No 2

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion Carried*

Date: 2-1-17  
 Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1368**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Olson    Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan	✓	
Vice Chairman Dockter		✓	Representative Mitskog	✓	
Representative Ertelt		✓			
Representative Grueneich		✓			
Representative Hatlestad	✓				
Representative Howe		✓			
Representative Koppelman		✓			
Representative Olson	✓				
Representative Schobinger	✓	✓			
Representative Steiner	✓				
Representative Toman		✓			
Representative Trottier		✓			

Total (Yes) 5    No 9

Absent 0

Floor Assignment R

If the vote is on an amendment, briefly indicate intent:

**FAILED**

Date: 2-1-17  
 Roll Call Vote #: 4

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1368**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Koppelman Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan		✓
Vice Chairman Dockter	✓		Representative Mitskog		✓
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad		✓			
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson		✓			
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1368: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1368 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**HB 1368: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1368 was placed on the Sixth order on the calendar.

Page 1, line 3, after "proceedings" insert "; and to provide an expiration date"

Page 2, after line 11, insert:

**"SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2019, and after that date is ineffective."

Renumber accordingly



2017 TESTIMONY

HB 1368

House Finance & Taxation Committee

Craig Headland, Chairman

January 30, 2017

HB 1368

#1  
1-30-17  
HB 1368

Chairman Headland, members of the House Finance & Taxation Committee, thank you for giving me this opportunity to bring a concern before your committee. My name is Donald Longmuir and I am a Representative from District 2 which consists of 12 townships in Mountrail County, all of Burke County, all of Divide and all of Williams with the exception of most of the City of Williston.

It was brought to my attention by a Tax Equalization Director that NDCC 57-13-06 and 15-13-08 allow for decisions of the County Tax Equalization Board to be appealed to the State Board of Equalization by the property owner who does not agree with the County Board's decision. However, if the County Board does not agree with the State Board of Equalization's decision there is no recourse for the County.

HB 1368 is a straight forward bill that would provide an opportunity for the County to appeal the State Board of Equalization's decision to the district court.

This issue has become of a concern of tax equalization directors in recent years due to the increased amount of industrial property being developed in the counties. Many of the State Board of Equalization's decisions are based on court precedents that were established in the 1970's and 1980's. Today things are much different. New technology and how this technology effects equipment in new industrial facilities makes it challenging to make the distinction between real property, which is taxable, and personal property which is not taxable. Some Counties have gone to outside professional services to assist in properly identifying real and personal property.

We believe there have been instances where industrial property valuations have been improperly reduced because the State Board of Equalization decisions have been based on antiquated court precedent. The only way to change antiquated court precedent is to go to court to obtain an updated ruling. HB 1368 would give the Counties the opportunity to seek new court rulings.

Here today to provide examples of what counties have faced over the past few years is Lori Hanson, Mountrail County Tax Equalization Director and Wade G. Enget, Mountrail County States Attorney.

Thank you Chairman Headland and members of the House Finance & Taxation Committee, and I would stand for any questions. However, I would recommend you save your questions to the two following speakers who would be in a better position to answer those questions.

Rep Donald Longmuir

District 2

## Testimony for HB 1368

**Good Morning Chairman Headland, Members of the Board!**

**I am Lori Hanson, Mountrail County Director of Tax Equalization. I am here in support of HB 1368 adding the ability of a county board of equalization to appeal to district court a decision made by the state board of equalization that reduces the valuation of locally assessed taxable property.**

**In 2009 Mountrail County took the initiative to hire outside experts, Pickett and Company, to value our industrial properties that were built during the oil boom as I do not have the knowledge/expertise to assess these types of properties. We currently have five rail facilities for crude oil, 2 gas plants plus frac sand facilities and a nitrogen plant. Attached you will find a copy of Mr. Robert Lehn's, Vice President of Pickett and Company, qualifications as he has been in charge of the valuations for these facilities. At this time Pickett & Company is working in eight counties in North Dakota.**

**In 2014, an industrial company filed appeals regarding the issue of personal property for their two rail facilities with one location on the BNSF line (Manitou Township) and one on the Soo line (Van Hook Township). These appeals started at the local township level and proceeded to the county level. These two facilities are similar in nature with Manitou site being larger. At the 2014 state board of equalization meeting, an attorney representing the industrial company stated that they withdrew the appeal on the Van Hook site. This presented the County's argument that if you have similar properties they should be valued in the same manner. With the withdrawal of the one property, it establishes the thought process of a fair and equitable assessment for both sites.**

**I have included the staff reports for the 2014 and 2015 assessment provided to the state board of equalization. In the 2015 decision, the definition of real property was stated in the staff report (part 2 only).**

**57-02-04. Real property defined.**

Real property, for the purpose of taxation, includes:

1. The land itself, whether laid out in town lots or otherwise, and improvements to the land, such as ditching, surfacing, and leveling, except plowing and trees, and all rights and privileges thereto belonging or in anywise appertaining, and all mines, minerals, and quarries in and under the same and shall expressly include all such improvements made by persons to lands held by them under the laws of the United States, all such improvements to land the title to which still is vested in any railroad company and which is not used exclusively for railroad purposes, and improvements to land belonging to any other corporation or limited liability company whose property is not subject to the same mode and rule of taxation as other property.

2. All structures and buildings, including manufactured homes as defined in section 41-09-02 with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied, including systems for the heating, air-conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining, but shall not include items which pertain to the use of such structures and buildings, such as machinery or equipment used for trade or manufacture which are not constructed as an integral part of and are not essential for the support of such structures or buildings, and which are removable without materially limiting or restricting the use of such structures or buildings.

3. Machinery and equipment, but not including small tools and office equipment, used or intended for use in any process of refining products from oil or gas extracted from the earth, but not including such equipment or appurtenances located on leased oil and gas production sites.

**In addition, the issue of personal property versus real property on these rail facilities is being determined by case law from the 1970's (Crystal Sugar vs Trail County) and the 1980's (Ladish Malting vs Stutsman County) along with a guideline issued by the Office of the State Tax Commissioner for personal property in 1971. Neither of these cases deal with the specific items for crude oil rail facilities but are agricultural processing plants.**

**According to N.D.C.C. 57-23-04, a taxpayer aggrieved by any decision of the board of county commissioners may appeal in the manner provided by law. Attached is a copy of the portion of the Taxpayer Bill of Rights which states that the decision of the State Board is final with the exception for the property owner who may proceed to a formal appeal (an abatement application) which**

can lead to District Court. As a political subdivision, it is important that the same rights are awarded for appeal in regards to a state board of equalization.

It is not our intent to challenge all decisions of the state board of equalization but to have the ability when necessary to bring issues before a court of law that impact the local taxpayers in regards to our tax base.

I have included a breakdown of the value and tax revenue lost due to the decision granted. For the 2014 assessment year, the value lost was \$10,156,800 which would have generated \$70,513.59 and for the 2015 assessment year, the value lost was \$12,410,600 which would have generated \$89,784.48.

This issue of personal property versus real property does not just affect Mountrail County but it affects the State as a whole.

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HB 1368

**ROBERT T. (BOB) LEHN**

**Vice President**

**Experience**

Thos. Y. Pickett & Company, Inc. (Dallas)	24 Years
Purvin & Gertz, Inc. (Dallas & London) Associate	1 Year
Hadson Gas Systems, Inc. (Houston, Dallas & London) Manager – Projects & Facilities (Dallas) Director – Gas Supply & Transportation (London)	4 Years
Muse, Stancil & Company (Dallas) Consultant	2 Years
Amoco Production Company (USA) (Chicago, Corpus Christi, Houston) Staff Plant Engineer	8 Years

**Qualifications**

Mr. Lehn performs railroad, pipeline, gas gathering and processing facilities and industrial valuations of many complex manufacturing sites in various states. He is experienced in domestic and in international energy project management. This experience included performing economic evaluations with consideration to environmental and regulatory issues. Reports to senior management of operating companies and to governmental agencies were made. Prior to T.Y. Pickett, as a consultant, he performed fair market valuations and physical asset appraisals of large gas plants and pipelines as well as other facilities. Mr. Lehn continues appraising these facilities, along with others, including paint pigment, explosives and agricultural (fertilizer, pesticides, ethanol) and petrochemical plants. Mr. Lehn's previous and current refinery appraisal assignments include sites in the following states: Kansas, Mississippi, North Dakota, Oklahoma, Texas and Wyoming. Expert testimony has been provided on several refineries and on other special purpose properties to Boards of Equalization, to Appraisal Review Boards, or to Courts and to State Tax Commissions in Texas, Oklahoma, North Dakota, Kansas, Louisiana, Wyoming, Mississippi and in Florida. Mr. Lehn performs golf and ski resort real estate appraisals. He has spoken at the Annual IAAO Conferences, at the IAAO Legal Seminars and at regional and at various State and County Assessors' functions and at other venues.

**Education/Licenses**

Master of Chemical Engineering – Rice University – Houston, Texas  
B.A. in Chemical Engineering – Rice University – Houston, Texas  
Professional Engineer – State of Texas – License #73203  
Registered Professional Appraiser – State of Texas – License #67474

**Professional Associations**

American Institute of Chemical Engineers  
American Chemical Society  
Texas Association of Appraisal Districts  
Texas Association of Assessing Officers  
International Association of Assessing Officers (IAAO)  
-- Associate Member, Ethics Committee (2010-2012)

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HB 1368

## Staff Report for 2014 State Board of Equalization

September 19, 2014

File No.: 2014-MOUN-MOUN-001

Prepared By: Jolene Vidal

County or City: Mountrail

Appellant:

Issue: Valuation contains personal property.

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**Summary:** Rail Terminal, represented by \_\_\_\_\_, appeals the assessment on parcels: 20-0009300 and 20-0008100. \_\_\_\_\_ also asserts that specific items should not be included in the assessment as they should be determined personal property and not real property. An independent appraisal by \_\_\_\_\_ shows the valuation exceeds market value.

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**Analysis:** The structures at the \_\_\_\_\_ Facility owned by \_\_\_\_\_, in Mountrail County, facilitate truck offloading, rail car loading, oil storage, and associated administrative and mechanical support functions. For 2014, Mountrail County hired an outside appraisal firm to value parcels 20-0009300 and 20-008100. The valuation as equalized by the Mountrail County Board of Equalization of the two parcels is \$69,672,000. I visited the site on September 4, 2014.

I reviewed the Mountrail County appraisal of the two parcels that make up the \_\_\_\_\_ Facility and determined that appraisal does contain personal property. I went through the appraisal by line item and removed the personal property. No specific breakdown was given of the individual items combined on the Mountrail County appraisal and referred to as 'General Equipment'. During a conference call with Mountrail County's outside appraiser on September 10, 2014, we went through the appraisal by line item. The appraiser confirmed that the Mountrail County appraisal contained information that had been provided by \_\_\_\_\_ and that had been obtained during construction of the \_\_\_\_\_ Facility. After removing the personal property cost items from the Mountrail Appraisal, the value of structures and land on that appraisal is \$59,646,720.

During a September 8, 2014 conference call with \_\_\_\_\_ outside appraisers, each part of the facility was reviewed. The appraisers explained what was included in the cost totals for each line item of the appraisals. I was also provided a breakdown of the items included in the general equipment category. \_\_\_\_\_ appraisers submitted separate appraisals for the real and personal property within the two parcel site. The personal property appraisal lists the 12 car loading rack, the 6 truck loading rack and the 10 car loading rack each as a separate line item. Although the equipment attached to the loading racks is personal property, the loading racks themselves are structures and should be assessed as real property. I requested that the appraiser separate the equipment cost from the loading rack total cost. The indicated market value of the structure of the loading racks without the equipment is \$2,650,464. I added the cost of the loading racks to the real property appraisal portion of the \_\_\_\_\_ appraisal. The Plains appraisal contains the land and structure value and stated the value as \$51,540,000. With the additions of the loading racks the value would be \$54,192,164. I requested income information on the facility and was notified by \_\_\_\_\_ that they do not keep a separate financial statement for the facility. The facility loads an average of 104 rail cars a day.

I weighed the appraisals by Mountrail County and \_\_\_\_\_ in my determination of reduction in value. The information provided by \_\_\_\_\_, Mountrail County and the tour of the facility helped me determine what was treated as personal property within each appraisal. I made adjustments to both appraisals. Personal property

was removed from the Mountrail County appraisal, and the loading racks that had been treated as personal property in the appraisal were added to the real property appraisal. My estimate of value after removing personal property for 2014 is a reduction of fifteen percent on structure values as equalized by the Mountrail County Board of Equalization. The recommendation includes all real property located on parcels 20-0009300 and 20-0008100 as of February 1, 2014.

Mountrail County Equalized Value 2014			
<u>Parcel Number</u>	<u>Land</u>	<u>Structures</u>	<u>Total</u>
20-0009300	\$ 1,300,600	\$ 50,426,200	\$ 51,726,800
20-0008100	\$ 659,000	\$ 17,286,200	\$ 17,945,200
	\$ 1,959,600	\$ 67,712,400	\$ 69,672,000
Recommended 15% reduction of structure value			
<u>Parcel Number</u>	<u>Land</u>	<u>Structures</u>	<u>Total</u>
20-0009300	\$ 1,300,600	\$ 42,862,270	\$ 44,162,870
20-0008100	\$ 659,000	\$ 14,693,270	\$ 15,352,270
	\$ 1,959,600	\$ 57,555,540	\$ 59,515,140

The following page appendixes are pictures I took while on the tour.

**Recommendation:** Reduce the structure value of parcel 20-0009300 as equalized by the Mountrail County Board of Equalization by fifteen percent. Reduce the structure value of parcel 20-0008100 as equalized by Mountrail County Board of Equalization by fifteen percent.



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## Staff Report for 2015 State Board of Equalization

September 21, 2015

**File No.:** 2015-MOUN-MOUN-001

**County or City:** Mountrail County

**Appellant:**

**Issue:** Valuation contains personal property

**Prepared By:** Dustin Bakken &  
Linda Leadbetter

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**Summary:** \_\_\_\_\_, represented by \_\_\_\_\_, appeals the 2015 assessment on parcels: 20-0009300 and 20-0008100 of the \_\_\_\_\_ Terminal. \_\_\_\_\_ asserts that specific items should not be included in the assessment as they should be determined personal property and not real property. This appeal maintains the position of \_\_\_\_\_ for the 2014 assessment year, in which it appealed the classification of the same property.

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**Analysis:** The structures at the \_\_\_\_\_ Facility owned by \_\_\_\_\_, in Mountrail County, facilitate truck offloading and rail car loading of natural gas liquid products (NGL), oil storage, oil rail loading and associated administrative and mechanical support functions. For 2015, Mountrail County hired an outside appraisal firm to value parcels 20-0009300 and 20-008100. The valuation of the improvements, as equalized by the Mountrail County Board of Equalization, of the two parcels is \$66,736,370.

A review of the Mountrail County appraisal of the two parcels that make up the \_\_\_\_\_ Facility was performed and a determination was made that the appraisal does contain numerous categories that appear to be personal property in nature. The focus of the review concentrated on the Property Tax Division's staff report for the 2014 appeal in which the following line items were determined to be personal property in whole or in part:

- \_\_\_\_\_ Transload Terminal Boss System
- \_\_\_\_\_ Transload General Equipment
- \_\_\_\_\_ Transload- 12 rail loading racks
- \_\_\_\_\_ Transload- 6 truck Loading Racks
- Terminal Control Meter
- Station Receipt Meter Skid
- 10,000 BPH Custody Transfer Skid
- Station Pumping Equipment
- Station Site Maintenance Equipment
- Station Stationary Prover
- Station Vapor Destruction Unit
- Station 10 Car Loading Rack

A conference call was held with Mountrail County's outside appraiser on August 28, 2015. In the call, the appraiser provided explanation of the reasoning behind the classification of the disputed line items as real property. The appraiser contends that all plant machinery and equipment listed on the appraisal are integral parts of the facility for which the owner intends to use the business and cannot be removed without limiting the use of the structures.

During the site visit performed on August 25, 2015, an observation was made of the numerous components that are being disputed as personal property. Photographs of the interior of the facility were not taken due to

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the confidentiality and safety policies of the company. Photographs of the exterior of each specialized area were taken of the facility in 2014 and it was determined that additional photographs were not necessary. These photographs are provided as supplemental information at the end of this report.

For the 2015 assessment year \$215,460 in true and full value was added due to new construction of two separate buildings. They are listed on the county's recapitulation report as QC Lab Building and Facility Storage. These additions are the only changes in the property from the 2014 assessment year to the 2015 assessment year.

N.D.C.C. §57-02-04 provides for the definition of real property. (2) *"All structures and buildings....., including systems for the heating, air-conditioning, ventilating, sanitation, lighting, and plumbing of such structures and buildings, and all rights and privileges thereto belonging or in anywise appertaining, but shall not include items which pertain to the use of such structures and buildings, such as machinery or equipment used for trade or manufacture which are not constructed as an integral part of and are not essential for the support of such structures or buildings, and which are removable without materially limiting or restricting the use of such structures or buildings."*

Several items identified as personal property for the 2014 assessment were included in the assessment performed for Mountrail County in 2015. Although integral to the existing use of the structures, removal of these components does not jeopardize the structures and will not limit other uses for said structures. Therefore, the assessment value of personal property items identified in 2014 will be removed from the specific parcel assessments for 2015.

PARCEL# 20-0008100				2015 T&F	\$18,131,800
				Land	\$659,000
				Structure Value	\$17,472,800
	ID	Sec	Description		
PERSONAL	00015-A-5-2013	15	Terminal Control Meter	less	-\$263,460
PROPERTYADJUSTMENT	00020-A-5-2013	15	Station Receipt Meter Skid	less	-\$790,580
	00013-A-7-2013	15	10,000 BPH Custody Transfer Skid	less	-\$458,720
					-\$1,512,760
Reconciled Structure Value					\$15,960,040
Percentage of reconciled structure value to original structure value					91%
Percentage of reduction for personal property consideration of structure value					9%

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PARCEL# 20-0009300

2015 T&F \$50,564,200

				Land	
				Structure Value	
	ID	Sec			
					\$1,300,600
					\$49,263,600
PERSONAL	00002-A-5-2000	16	Ross Transload Terminal Boss System	less	-\$1,586,860
PROPERTYADJUSTMENT	00004-A-5-2000	16	Ross Transload General Equipment	less	-\$5,720,110
	00005-A-5-2000	16	Ross Transload- 12 rail loading racks	less	-\$2,088,970
	00006-A-5-2002	16	Ross Transload- 6 truck Loading Racks	less	-\$1,767,770
	00019-A-7-2013	16	Station Pumping Equipment	less	-\$250,660
	00021-A-7-2013	16	Station Site Maintenance Equipment	less	-\$339,810
	00022-A-7-2013	16	Station Stationary Prover	less	-\$195,630
	00024-A-7-2013	16	Station Vapor Destruction Unit	less	-\$235,790
	00025-A-7-2013	16	Station 10 Car Loading Rack	less	-\$1,398,840
					-\$13,584,440
REAL PROPERTY ADJUSTMENTS			Loading rack structures **	add	\$2,102,232
					-\$11,482,208

Reconciled Structure Value: \$37,781,392

\*\* Loading rack True and Full value less 60% adjustment for T&F for machinery and equipment as determined by Property Tax Staff in 2014 staff report

Percentage of reconciled structure value to original structure value 77%

Percentage of reduction for personal property consideration of structure value 22%

**Recommendation:** Reduce the structure value of parcel 20-0009300 as equalized by Mountrail County by 22%. Reduce the structure value of parcel 20-0008100 as equalized by Mountrail County by 9%.

# PROPERTY TAXES

HB 1368

## ASSESSMENT PROCESS

All real property subject to taxation is assessed according to its value on February 1 of each year. When the value of property changes there should be corresponding changes in the property's valuation for tax purposes.

Written notice must be sent to a property owner whenever the true and full value of a property has increased since the previous year's assessment to one or more of the following levels:

1. The assessor has increased the true and full valuation to a level of 10 percent or more and \$3,000 or more from the previous year's assessment. Delivery must occur at least 15 days prior to the local equalization meeting.
2. The township, city, or county board of equalization proposes to increase the true and full value returned by the assessor resulting in a cumulative increase of more than 15 percent from the amount of the previous year's assessment. Reasonable notice and opportunity to be heard regarding the intention of the board to increase the assessment must be given prior to the board taking action.
3. The township, city, or county board of equalization, or action by the State Board of Equalization has increased the true and full valuation to a level of 10 percent or more and \$3,000 or more from the previous year's assessment. Delivery must occur within 15 days after the meeting of the township, city, or county board that ordered the increase and within 30 days after the meeting of the state board of equalization if the state board ordered the increase.

The notice must be delivered in writing to the property owner's last known address, or provided to the property owner by electronic mail directed with verification of receipt to an email address at which the property owner has consented to receive notice.

The notice must provide the true and full values used to make the assessment and the dates, times, and locations of the local, county and state boards of equalization meetings.

## THE APPEAL PROCESS

In North Dakota there are two procedures for appealing an assessment (valuation).

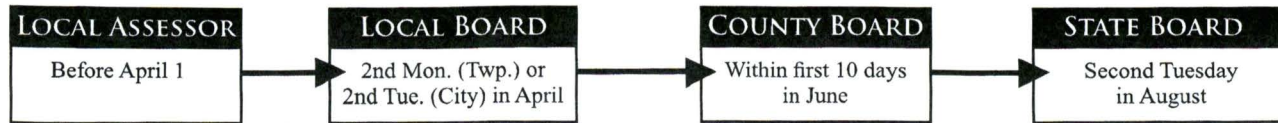
One procedure is informal and allows a property owner to appeal the current year's assessment by contacting the local assessor and the various boards of equalization before the assessment is finalized. This method will not result in any court action.

The other procedure is formal and allows a property owner to appeal either a current or prior year's assessment by completing and filing an application for abatement and refund of taxes. This procedure begins after the assessment is finalized, follows a strict schedule of hearings, and may result in court action as the final step of appeal.

- The steps for informal and formal appeals are on the next page.
- The following pages will also provide you with helpful information regarding the application process and compromise of unpaid taxes.

## PROPERTY TAX - INFORMAL APPEAL

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A property owner who has questions about an assessment (valuation) should contact the local (township, city or district) assessor before April 1.

A property owner may appeal the assessor's valuation for the current year to the local board of equalization. The township board normally meets the second Monday in April; the city board normally meets the second Tuesday in April. The local board may reduce an assessment upon the property owner's presentation of evidence to support the appeal.

The property owner may continue the appeal to the county board of equalization, which meets during the first 10 days in June.

The county board may reduce an assessment upon the property owner's presentation of evidence to support the appeal. A property owner may appeal to the county board without first appealing to the local board.

The final step is an appeal to the State Board of Equalization. The State Board meets the second Tuesday in August and may reduce an assessment only if the property owner has appealed to both the local and county boards of equalization. The decision of the State Board is final. However, a property owner may file an application for abatement and refund of taxes by following the procedures described on the next page.

## PROPERTY TAX - FORMAL APPEAL

### WHO MAY APPLY

Any person who has an estate, right, title or interest in a property may file an application for abatement or refund of taxes if the person claims an assessment is excessive or illegal. The application procedures are described on the next page. This includes, but is not limited to, the property owner, lessee, contract for deed purchaser, person who paid the tax, or person who has an interest in the property. Mobile home owners have the same right to abatement or refund as do owners of real property. Special assessments are not subject to abatement procedures.

### GROUNDINGS FOR ABATEMENT

- The assessment is invalid, inequitable or unjust.
- An error has been made in the entry, description, valuation or extension of tax.
- The improvements did not exist on the assessment date (February 1).
- The applicant had no taxable interest in the

property on the assessment date.

- The property is exempt.
- The taxes were erroneously paid.
- The property was assessed and taxed more than once in the same year.
- The building, mobile home, structure, or improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster.
- The applicant is eligible to receive the property tax credit for senior citizens or disabled persons.

### TIME FOR FILING APPLICATION

A person may file an application for abatement of the current year's assessment after the State Board of Equalization finalizes valuations following the August meeting. The application must be filed by November 1 of the year following the year in which the tax becomes payable. For example, the application for abatement of a 2016 tax (payable in 2017) must be filed no later than November 1, 2018.

# PROPERTY TAX - APPLICATION PROCEDURES

File Application

Applications are available from the county auditor or county director of tax equalization. Or go to the North Dakota Office of State Tax Commissioner's website at [www.nd.gov](http://www.nd.gov), click on For Individuals, then click Property Tax, then click Forms & Instructions on the right, and select Application for Abatement. The applicant files two copies of the completed application with the county auditor. By filing the application, the applicant agrees to allow assessment officials to inspect the property.

Hearing Notice

The county auditor presents a copy of the application to the appropriate city auditor or township clerk within five business days after the filing date. Within 10 days after receiving the application, the city auditor or township clerk notifies the applicant of the time and place of the hearing before the local governing body.

60 days

Local Hearing

Within 60 days after the date of the hearing notice, the local governing body considers the application.

30 days

Recommendations

The local governing body recommends either to grant or reject the application in whole or in part, and sends the recommendation to the county auditor no later than 30 days after the local hearing.

Hearing Notice

At least 10 days before the hearing before the board of county commissioners, the county auditor notifies the applicant of the time and place of the hearing.

10 days

County Hearing

At its next regular meeting, the board of county commissioners considers the application. The applicant has the opportunity to present information in support of the appeal at the hearing. The applicant is limited to the relief claimed in the application for abatement submitted to the board of county commissioners.

County Action

If the board of county commissioners approves the application, the assessment is corrected. If the tax has been paid, a refund is issued. If the board of county commissioners rejects the application in whole or part, it must mail a written explanation of the rationale for the decision to the applicant.

30 days

Court Appeal

The decision of the board of county commissioners may be appealed to North Dakota District Court. The notice of appeal must be filed with the clerk of court within 30 days of the county decision. A copy of the notice of appeal must be served on the board of county commissioners and the State Tax Commissioner. A property owner may want to consult with an attorney if contemplating an appeal to the court.

# PROPERTY TAX - COMPROMISE OF UNPAID TAXES

- If the tax on any real estate remains unpaid after the second Tuesday in December in the year it is due, the board of county commissioners has the authority, under certain conditions, to compromise a portion of unpaid taxes.
- There is no time limitation for filing for compromise.
- The compromise must be in the best interest of the county rather than the taxpayer.
- The reason for compromise must be valid, such as depreciation in value.
- The State Tax Commissioner must approve any compromise of tax.



# COLLECTIONS ACTIONS

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## WORK OUT PROBLEMS

We are always willing to work with you in maintaining current filing of returns and payment of taxes. It is helpful if you make arrangements prior to the due date, if possible, or contact us as soon as a problem exists.

## NOTICE

If you owe past-due tax, you are entitled to a notice which clearly identifies the tax, penalty, interest due, and any previous payments made.

## PAYMENT DUE

Payment is due immediately upon notification. If full payment is not possible, we may agree to a reasonable payment plan.

## PENALTY AND INTEREST

The law imposes penalty and interest charges if you do not pay your taxes on time. You are encouraged to pay as much as you can to lessen these charges.

## LIEN

You may receive notification before we file a lien against you. A tax lien is a public notice of debt and attaches to your property and your rights to property. It can be filed for continued failure to pay or to establish a payment agreement. A lien is a public record and may harm your credit rating.

## SUMMONS AND COMPLAINT

If, after you have been given the above opportunities, you still have not paid in full or established and maintained a payment plan, you may be served with a summons and complaint. If a judgment is obtained, you may have to pay the tax, penalty, interest, and legal costs.

## WAGE GARNISHMENT

You are entitled to notification before we send a wage levy to your employer. If a judgment has been obtained, a garnishment may be served to require your employer to withhold from your wages to pay the past-due tax, penalty and interest.

## PROPERTY SEIZURE

As a last resort, if a judgment is obtained, the sheriff may levy against or seize property to collect past-due tax, penalty, and interest. You will be notified by the sheriff prior to the sale of your property at a sheriff's auction.

## FOR MORE INFORMATION

If you have questions or need assistance regarding collection actions, contact the collections section:

Address: Office of State Tax Commissioner  
Tax Administration Division  
600 E. Boulevard Ave. Dept. 127  
Bismarck, ND 58505-0599

Website: [www.nd.gov/tax](http://www.nd.gov/tax)

Phone: 701.328.7088

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Parcel 45-0010800

	Land	Buildings	Total	
2016 Assessment Value	320,000	29,070,200	29,390,200	
2015 Assessment Value	320,000	30,503,400	30,823,400	No appeal
2014 Assessment Value	320,000	11,444,300	11,764,300	2014 appeal was dropped at the SBOE level.

Parcel 20-0008100

Appraisal by Pickett & Company  
Buildings

2016 Assessment Value	659,000	15,137,600	15,796,600	
2015 Assessment Value	659,000	15,900,200	16,559,200	17,472,800
2014 Assessment Value	659,000	14,693,300	15,352,300	17,286,200

Parcel 20-0009300

2016 Assessment Value	1,300,600	29,564,600	30,865,200	
2015 Assessment Value	1,300,600	38,425,600	39,726,200	49,263,600
2014 Assessment Value	1,300,600	42,862,300	44,162,900	50,426,200

For the 2014 Assessment year, the State Board of Equalization reduced the structure value on Parcel 20-0008100 and Parcel 20-0009300 by 15%.

For the 2015 Assessment year, the State Board of Equalization reduced the structure value on Parcel 20-0008100 by 9% and Parcel 20-0009300 by 22%.



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**2014 Value and Taxes Lost Due to SBOE Decision**

**\$10,156,800 True and Full Value**

Breakdown between taxing jurisdictions

State	1.00 Mill	\$ 507.84
County	45.79 Mills	\$ 23,253.99
Township	7.31 Mills	\$ 3,712.32
School	76.46 Mills	\$ 38,829.45
Fire	3.20 Mills	\$ 1,625.08
Ambulance	4.64 Mills	\$ 2,356.38
Soil	0.45 Mills	\$ 228.53
<b>TOTAL TAXES</b>		<b>\$ 70,513.59</b>

**2015 Value and Taxes Lost Due to SBOE Decision**

**\$12,410,600 True and Full Value**

Breakdown between taxing jurisdictions

State	1.00 Mill	\$ 620.53
County	42.23 Mills	\$ 26,204.98
Township	18.00 Mills	\$ 11,169.54
School	75.36 Mills	\$ 46,763.14
Fire	2.93 Mills	\$ 1,818.16
Ambulance	4.39 Mills	\$ 2,724.12
Soil	0.78 Mills	\$ 484.01
<b>TOTAL TAXES</b>		<b>\$ 89,784.48</b>

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## HOUSE BILL 1368

Members of the House Tax and Finance Committee:

My name is Wade G. Enget, and I am the Mountrail County State's Attorney. I have served in that capacity since November 1, 1985

I rise in support of HB 1368, which will amend Sections 57-13-08 N.D.C.C. and 57-13-08 N.D.C.C.. At the present time, there is no statutory right for a taxing entity to appeal decisions made by the State Board of Equalization. This Bill will allow for the a county board of equalization to appeal to the district court a decision by the state board of equalization reducing the valuation of locally assessed taxable property.

As you have previously been advised by Lori Hanson, the facts that happened in relations to Mountrail County and the State Board of Equalization in 2014 and 2015 are living proof of why HB 1368 should be approved.

As you know, they say that lawyers live in a different world. That is true, as our "legal" world is one that is filled with procedural and substantive rules that need to be followed. One of the principal rules that we follow is the rule of "collateral estoppel", which means that the determination of the facts litigated between the parties to a proceeding are binding and conclusive on those parties in any future litigation. In 2014, one company appealed Mountrail County's assessments that were made on two separate rail loading facilities. As you heard from Lori Hanson, when the company appeared before the state board, they waived their right to appeal the valuation decision of the Mountrail County Board of Equalization, thereby AGREEING that Mountrail County validly appraised their rail loading facility. Then, that same company said that the 2<sup>nd</sup> rail loading facility was not validly appraised by Mountrail County in that it included "personal property", even though it had the same purpose-----that being a rail loading facility.

My legal training kicked in, and I asked the State Board this question: if the company agreed that the valuation of 1<sup>st</sup> oil loading facility, wouldn't it follow logically that the 2<sup>nd</sup> oil loading facility should be valued using the same valuation methodology? Also, shouldn't the rule of "collateral estoppel", as explained above, to be applied against that company?

HB 1368 is not a "vendetta" bill. It is the methodolgy by which all parties are held to a standard of making decisions that are not arbitrary, capricious or without support of the existing laws in the State of North Dakota. Every decision made by local government is appealable in one fashion or another. HB 1368 extends that review to the decisions made by the State Board of Equalization.

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# Industrial and Commercial Tax Valuation Impacts on Western North Dakota (A Vision West ND Review)

The 19 member counties of Vision West ND have a significant stake in equitable and accurate assessments for pipelines and pipeline infrastructure as centrally assessed by the ND State Tax Department and certified by the State Board of Equalization (SBOE) as demonstrated in the following chart.

Percent of ND Pipeline Assessments in ND and Vision West ND Counties



The next chart identifies the total taxable valuation of pipelines throughout all of North Dakota and those in the Vision West ND region. The taxable valuation of the pipelines in the Vision West ND counties account for 83% of the total taxable valuation of all pipelines in North Dakota.

Taxable Valuation of Pipelines in ND and Vision West ND Counties

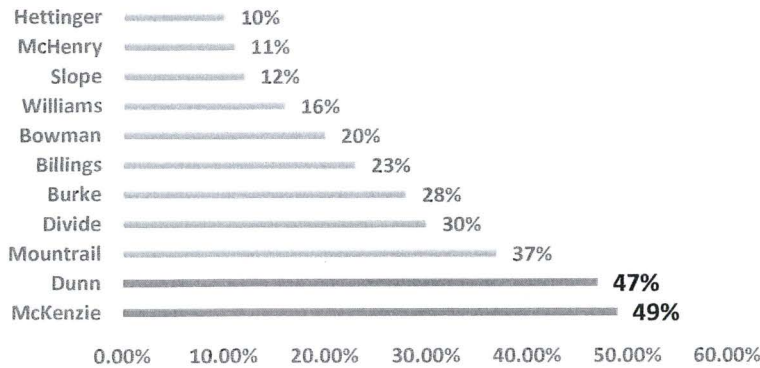
(Total Taxable Valuation of Pipelines in ND: \$ 307,110,053)



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Pipeline assessments account for 20% or more of the tax base for seven of the 19 counties. 11 of the 19 counties have a pipeline tax base of 10% or greater.

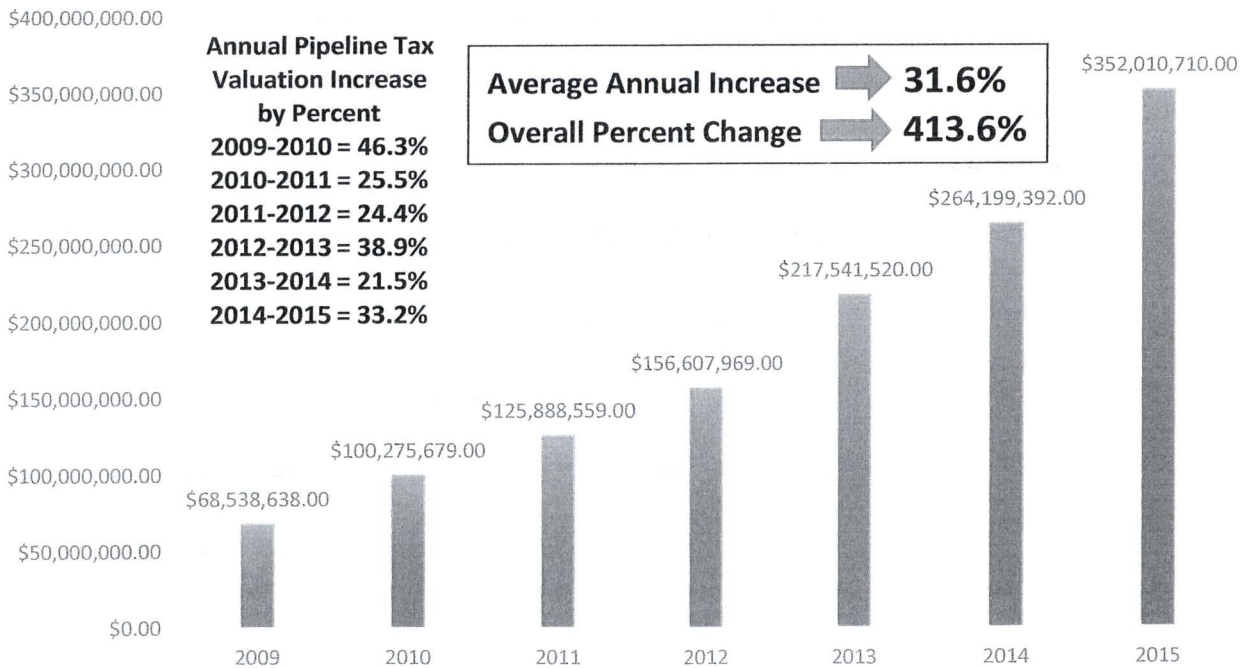
### Vision West ND Counties with Pipeline Assessments as 10% or More of Tax Base



PIPELINE ASSESSMENTS ACCOUNT FOR  
**16%**  
OF THE ENTIRE TAX BASE FOR VISION WEST COUNTIES

The taxable valuation for pipelines throughout the state of North Dakota has increased an average of more than 30% each year from 2009 to 2015 and the total tax valuation has more than quadrupled in the same period. The actual dollar amount of pipeline valuation in 2015 was more than five times the total dollar amount in 2009.

### Taxable Valuation of ND Pipelines 2009-2015



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Centrally assessed property consists of railroads, electric and gas utilities, and pipelines. Pipeline assessments accounted for three times the total of railroads and utility companies combined in 2015.

### Percent of Total Tax Valuation of Centrally Assessed Property Types in Vision West ND Counties



Locally assessed property is defined as real property for which the assessed value is determined at the county level. North Dakota county assessors are often not highly trained in determining a fair and equitable valuation of their locally assessed industrial and large commercial facilities, and thus, many counties contract with specialist appraisal firms for their valuations. Those valuations are then certified by the State Board of Equalization (SBOE).

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The 19 Vision West ND counties were asked about their use of specialist appraisal firms for the valuations of their locally assessed industrial and commercial facilities. Of the **17 counties** that responded:

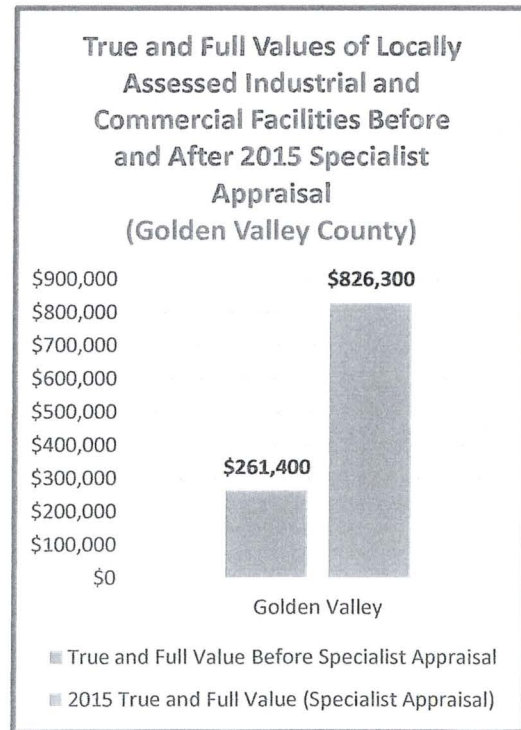
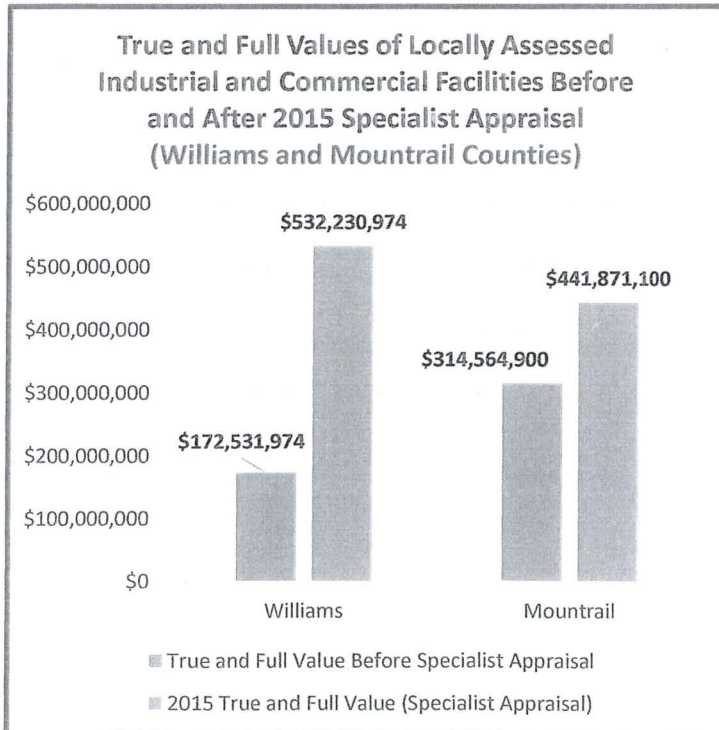
- **13 counties** reported that they had locally assessed facilities
- **10 counties** reported they contract for appraisals

Of the **10 counties** that contracts for appraisals, **9** reported the 2015 annual cost of those contracts.

Cost of 2015 Appraisal Contracts for 9 Reporting Vision West ND Counties	
County	Cost
Billings	\$33,000
Bowman	\$32,000
Burke	\$21,500
Divide	\$32,500
Dunn	\$29,350
Golden Valley	\$3,000
McKenzie	\$69,400
Mountrail	\$68,900
Williams	\$82,250
<b>Aggregate Total = \$371,900</b>	

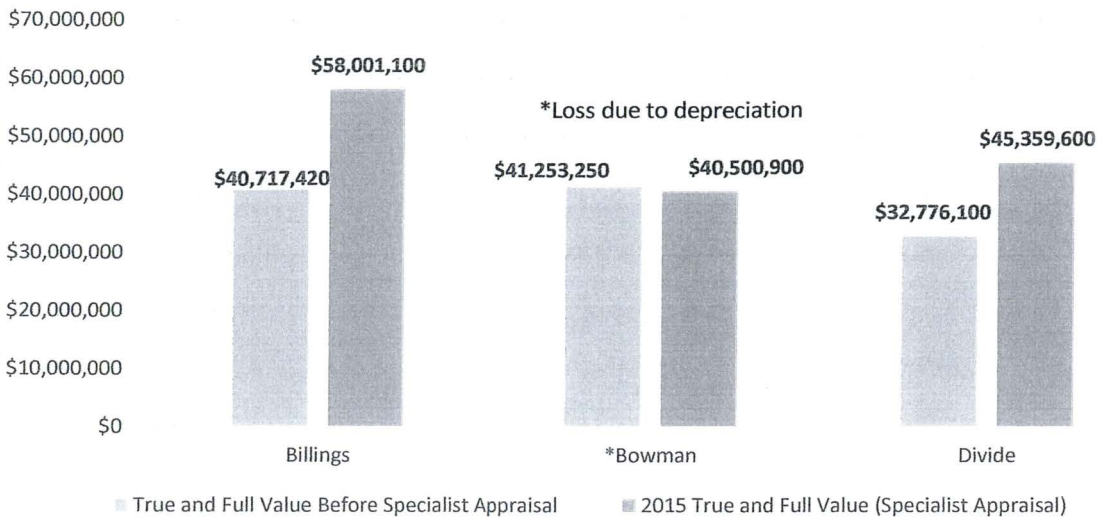
**Six** counties also reported the true and full value of their locally assessed commercial and industrial facilities **before** 2015 when most SWD sites were not appraised, and their 2015 true and full values after specialist appraisals.

(\*Note that 3 rail facilities and 59 SWD sites were not included in the true and full values before 2015.)



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**True and Full Values of Locally Assessed Industrial and Commercial Facilities Before Specialist Appraisal and After 2015 Specialist Appraisal (Billings, Bowman, and Divide Counties)**



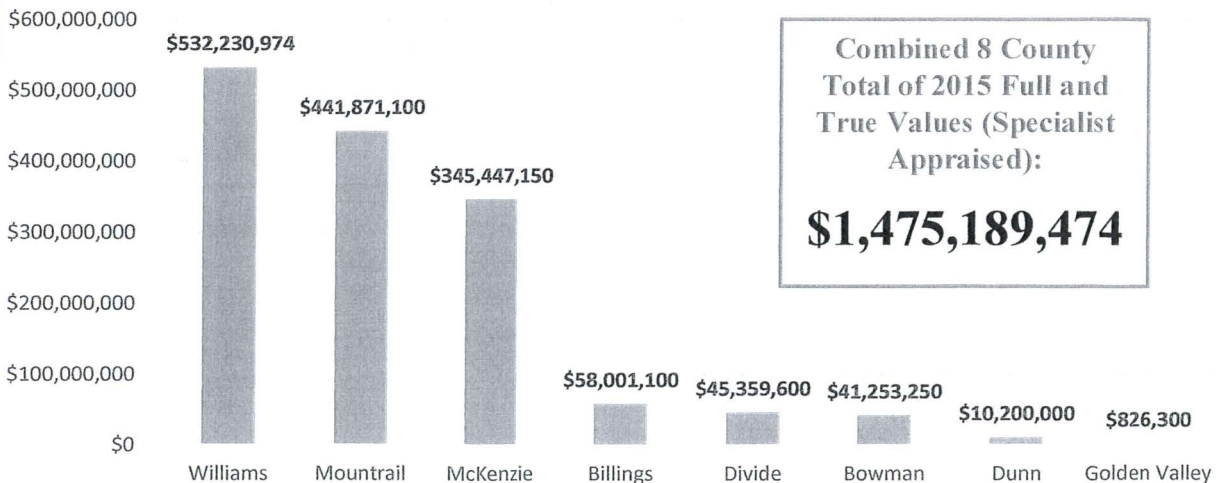
**6 Combined Counties True and Full Value Before 2015 Appraisals** \$602,105,044

**6 Combined Counties 2015 True and Full Value (Specialist Appraisal)** → \$1,144,220,784

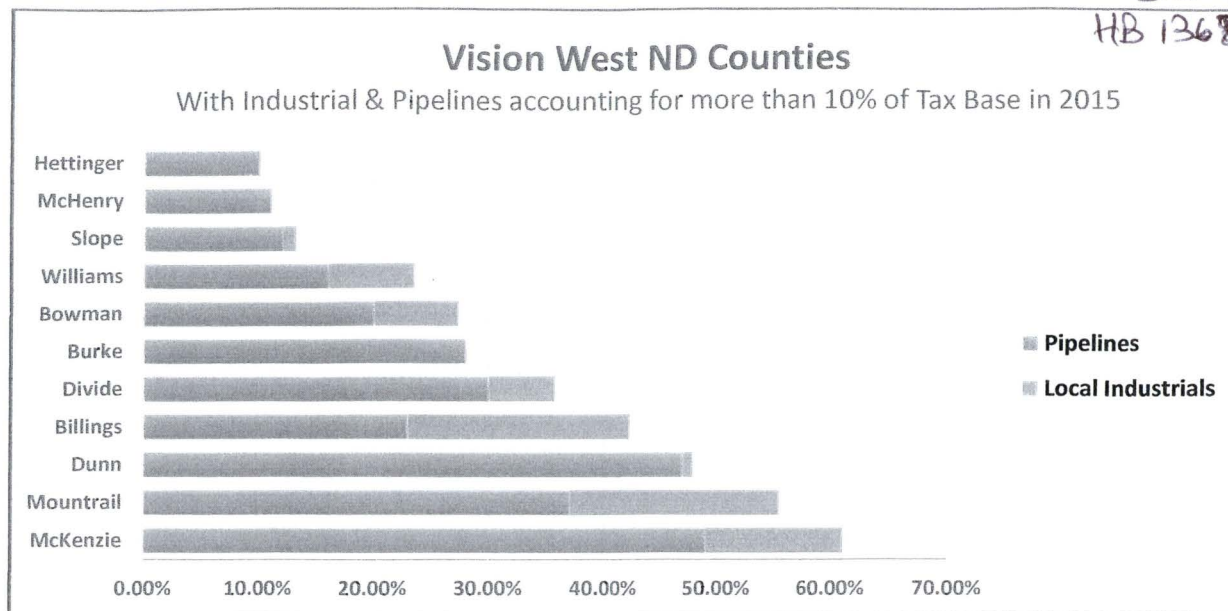
**Represents a 90% Increase in Value** →

**2015 Full and True Values (Specialist Appraised) of Locally Assessed Industrial and Commercial Facilities for 8 Reporting Vision West ND Counties**

*\*Note Burke did not have reportable values yet*



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## EXAMPLES OF ISSUES REPORTED BY COUNTIES

- ❖ *Mountrail County had a rail facility assessed in 2014 by TY Pickett at \$67,712,400. The SBOE reduced the value by 15%, creating an end value of \$57,555,600. TY Pickett assessed that same facility again in 2015 at \$66,712,400. Again, the Board reduced the value by 22%, creating an end value of \$54,325,800.*

*Mountrail's overall loss of value over 2 years = \$22,567,400. Once the State Board of Equalization has made a decision, there is no recourse for the counties.*

*The ND Supreme Court documents for the case: Plains Marketing, LP v. Mountrail County Board of County Commissioners had references that "the SBE did not provide any reason for its decision" to reduce the valuation.*

- ❖ *Divide County asked the State Tax Department for guidance in determining if a facility should be centrally or locally assessed, and included pictures of the facility in question. The State Tax Department's response was to tell the county to have TY Pickett, an out-of-state specialist appraisal firm, make the determination.*

*County Assessors are responsible for determining what properties are locally assessed in an effort to receive an accurate and equitable assessment of their facilities for their counties, yet they cannot necessarily rely on their State Tax Department for knowledgeable insight when they have questions.*

- ❖ *In Billings County, the assessment for Petro Hunt's Little Knife gas plant was certified to the county by the company's tax representative every two years based on a formula set up in 1991 by Barry Hasti, the State Supervisor of Assessments at the time. In 2013, the county received an appraisal of \$5,778,000 for the gas plant. This amount was 30% less than their 2011-2012 appraisal value, despite their facility operating at near capacity and the Bakken Oil Boom going strong. In 2014, they contracted with TY Pickett for a third party review, and received an appraisal value of \$16,384,150, an increase of \$10,606,150.*

All the information for this report is derived from "Proceedings of State Board of Equalization of North Dakota 2015" and data provided by the Vision West ND county tax directors.



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## THREE MAJOR CONCERNS FOR THE COUNTIES

### 1. CENTRALLY ASSESSED COMPANIES SELF-CERTIFY

Centrally assessed companies are required to certify their infrastructure and costs to the ND State Tax Department each year by May 1. The state uses the companies' reports to calculate and distribute the valuations to the counties. The State Tax Department is unable to verify or hold companies accountable without doing field checks, but there is not adequate staff with the experience or expertise to ensure reporting accuracy by the State.

### 2. LACK OF TRAINING FOR LOCALLY ASSESSED PROPERTIES

The State Tax Department does not require or provide the necessary training for valuation of large industrial facilities assessed at the local level. In order to determine a fair and equitable valuation, the counties must contract with a specialist appraisal firm. These types of facilities add a tremendous amount of value to the tax base of the counties. However, if the property owner/company appeals the local assessment to the SBOE, the State Tax Department does not have the expertise to properly investigate the appeal, nor does it have adequate reference material to determine the classification of real or personal property.

### 3. OUTDATED TAXATION MANUAL

The state reference used for determining personal property and real property is outdated and must have a method for amending and bringing up to date. The document's heading and title is as follows:

Office of the State Tax Commissioner

Byron L. Dorgan, Commissioner

1971 Guidelines for Classification of Property for Tax Purposes

2016 INVESTIGATIONS REQUIRED

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# 1

	001	002	003		
COUNTY	AG	COMM	RES	APPEAL	ASSIGNEE
Adams		-10%			
Barnes			x	004 Robert Bruns (farm res)	
	x			005 Donald Berge	
Burke			-2%		
		x		004 Basin Transload	
Cavalier	x			004 Tom Valentine	
Dickey		x		004 Harris Industries, LLC	
Emmons		13%			
			21%		
Foster	11%				
		11%			
			42%		
Grant			18%		
Griggs		11%			
			12%		
Hettinger			x	004 Nicholas & Anita Kehr	
			x	005 Dennis Boknecht	
McHenry			x	004 Dana Erin Triggs	
McIntosh		-1%			
Mercer		x		004 Julie & Ben Lenzen	
Nelson	x			004 Rodney Brossart	
Oliver			21%		
Sheridan			-1%		
Sioux		-12%			
Stark		x		004 Sierra Ridge	
		x		005 Microtel Inn & Suites	
Steele		x		004 Luverne Farmers Elevator	
Walsh			x	004 Joseph Fietek	
Wells		11%			
			12%		
Williams		x		004 Olsen Tioga Apartments	
		x		005 Tioga Center Apartments	