

DEPARTMENT OF TRANSPORTATION FUNDING MECHANISMS AND FUNDING OPTIONS AVAILABLE - BACKGROUND MEMORANDUM

Section 12 of 2017 Senate Bill No. 2012 ([Appendix A](#)) directs the Legislative Management to study the funding mechanisms and options available to the Department of Transportation (DOT), political subdivisions, and public transportation providers, for road construction, maintenance, other transportation infrastructure needs, and transit services.

HIGHWAY FUNDING

In addition to federal funding received by the state for the construction and maintenance of highways, the major state sources of highway funding are derived from the collection of motor fuels taxes and motor vehicle registrations.

Section 11 of Article X of the Constitution of North Dakota, provides:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund. North Dakota Century Code Section 54-27-19 provides the highway tax distribution fund consists of the "moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes." This section provides after the first \$5.5 million per biennium is transferred to the state highway fund for the purpose of providing administrative assistance to other transferees, the money in the fund must be distributed by the State Treasurer as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.
 - b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.

- (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
 - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Section 54-27-19(1) provides for 61.3 percent of the funds from the highway tax distribution fund be transferred to DOT for deposit in the state highway fund. Section 24-02-37(1) provides, except for investment income, the money of the state highway fund must be applied in the following priority:

- a. The cost of maintaining the state highway system.
- b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota. Notwithstanding any other provision of law, the department of transportation may repay the United States department of transportation for previous related expenditures from current biennium appropriations to allow the department to reobligate the federal aid to other federal aid projects.
- c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

Section 54-27-19(2) requires 2.7 percent of the funds from the highway tax distribution fund to be deposited in the township highway fund. Section 54-27-19.1 directs the State Treasurer to distribute the money to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds, organized townships must provide 50 percent matching funds. Each county treasurer is required to allocate the funds received to the organized townships in the county which provide 50 percent matching funds based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county does not have organized townships, or has some organized and some unorganized townships, the county is required to retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county.

Section 54-27-19(3) allocates 1.5 percent of the funds from the highway tax distribution fund to the public transportation fund. Section 39-04.2-04 provides money in the public transportation fund must be disbursed under guidelines issued by the Director of the Department of Transportation and must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped. In addition the money may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the Director.

**OTHER DEDUCTIONS BEFORE ALLOCATIONS FROM
THE HIGHWAY TAX DISTRIBUTION FUND**

Funding for the Highway Patrol, Parks and Recreation Department snowmobile safety, the ethanol incentive fund, Game and Fish Department motorboat programs, and DOT administration of licensing, fees, and permits before allocations to DOT, townships, public transit, counties, and cities is calculated as identified in [Appendix B](#).

**LEGISLATIVE HISTORY OF THE MOTOR VEHICLE FUELS TAX
AND SPECIAL FUELS EXCISE TAX**

Prior to 1983

Prior to 1983 the motor vehicle fuel excise tax was 8 cents per gallon on motor vehicle fuel sold and a special fuels excise tax of 8 cents per gallon. The 1983 Legislative Assembly repealed Chapter 57-54 relating to motor vehicle fuels tax and created Chapter 57-43.1 to consolidate the provisions of the motor fuels tax law and the importers for use tax law. The 1983 Legislative Assembly also repealed Chapter 57-52 relating to special fuels excise tax and created Chapter 57-43.2 to consolidate the provisions of the Special Fuels Tax Act, the special fuels tax levy, the Importers for Use Tax Act, and the aviation fuel tax.

1983

The 1983 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 1 of House Bill No. 1539 imposed a 13 cents per gallon tax for all motor vehicle fuel sold except on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol, which was taxed as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
Through December 31, 1983	\$0.09
January 1, 1984 through December 31, 1984	\$0.08
January 1, 1985 through December 31, 1985	\$0.07
January 1, 1986 through June 30, 1992	\$0.09
July 1, 1992	\$0.13

- **Special fuels excise tax** - Section 1 of House Bill No. 1072 created Chapter 57-43.2 related to special fuels taxes and imposed an excise tax of 8 cents per gallon on the sale or delivery of special fuel with some exceptions and an excise tax of 2 cents per gallon on the exempt items in Section 57-43.2-02. Section 1 of House Bill No. 1539 amended Section 1 of House Bill No. 1072 to increase the special fuels excise tax from 8 cents per gallon to 13 cents per gallon.

1985

The 1985 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 1 of Senate Bill No. 2296 changed the language from agricultural ethyl or methanol to "a qualifying alcohol," adjusted the motor fuels tax on motor vehicle fuel sold containing a minimum of 10 percent agricultural ethyl or methanol as shown in the following table:

Exception Effective Dates	Tax Rate Per Gallon
July 1, 1985 through June 30, 1987	\$0.05
January 1, 1987 through December 31, 1992	\$0.09
January 1, 1993	\$0.13

- **Special fuels excise tax** - Section 1 of House Bill No. 1248 amended the definition of special fuel to include compressed natural gas.

1987

The 1987 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 9 of Senate Bill No. 2557 increased the motor vehicle fuels tax from 13 cents per gallon to 17 cents per gallon for all motor vehicle fuel sold.
- **Special fuels excise tax** - Section 10 of Senate Bill No. 2557 increased the special fuels excise tax from 13 cents per gallon to 17 cents per gallon.

1989

The 1989 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 2 of Senate Bill No. 2029 increased the motor vehicle fuels tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold. Referred measure was disapproved on December 5, 1989, leaving the motor vehicle fuels tax rate at 17 cents per gallon.
- **Special fuels excise tax** - Section 3 of Senate Bill No. 2029 increased the special fuels excise tax from 17 cents per gallon to 19 cents per gallon. Referred measure was disapproved on December 5, 1989, leaving the special fuels excise tax rate at 17 cents per gallon.

1991

The 1991 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 2 of House Bill No. 1575 removed Section 57-43.1-02(2) relating to the exception from the motor vehicle fuels tax for motor vehicle fuels containing a minimum of 10 percent of qualifying alcohol.

1997

The 1997 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 1 of House Bill No. 1163 increased the motor vehicle fuels tax from 17 cents per gallon to 20 cents per gallon for all motor vehicle fuel sold.
- **Special fuels excise tax** - Section 12 of House Bill No. 1311 removed exemptions from the 17 cents per gallon on special fuels. Section 2 of House Bill No. 1163 increased the special fuels excise tax from 17 cents per gallon to 20 cents per gallon.

1999

The 1999 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 2 of House Bill No. 1183 increased the motor vehicle fuels tax from 20 cents per gallon to 21 cents per gallon for all motor vehicle fuel sold.
- **Special fuels excise tax** - Section 3 of House Bill No. 1183 increased the special fuels excise tax from 20 cents per gallon to 21 cents per gallon.

2001

The 2001 Legislative Assembly approved the following:

- **Special fuels excise tax** - Section 3 of Senate Bill No. 2454 amended Section 57-43.2-02 regarding special fuels excise taxes to authorize a reduction of one and five-hundredths cents per gallon on the sale or delivery of diesel fuel that contains at least 2 percent biodiesel fuel by weight.

2005

The 2005 Legislative Assembly approved the following:

- **Motor vehicle fuels tax** - Section 12 of Senate Bill No. 2012 increased the motor vehicle fuels tax from 21 cents per gallon to 23 cents per gallon for all motor vehicle fuel sold. Section 2 of House Bill No. 1478, created a new subsection to Section 57-43.1-02, imposing a 1 cent per gallon motor vehicle fuels tax on E85 fuel effective after June 30, 2005, through the month in which a cumulative total of 1.2 million gallons of E85 fuel has been reported to the Tax Commissioner and after that date is ineffective.
- **Special fuels excise tax** - Section 14 of Senate Bill No. 2012 amended Section 57-43.2-02 regarding special fuels excise taxes to increase the special fuels excise tax from 21 cents per gallon to 23 cents per gallon effective after June 30, 2005.

MOTOR VEHICLE REGISTRATION FEES

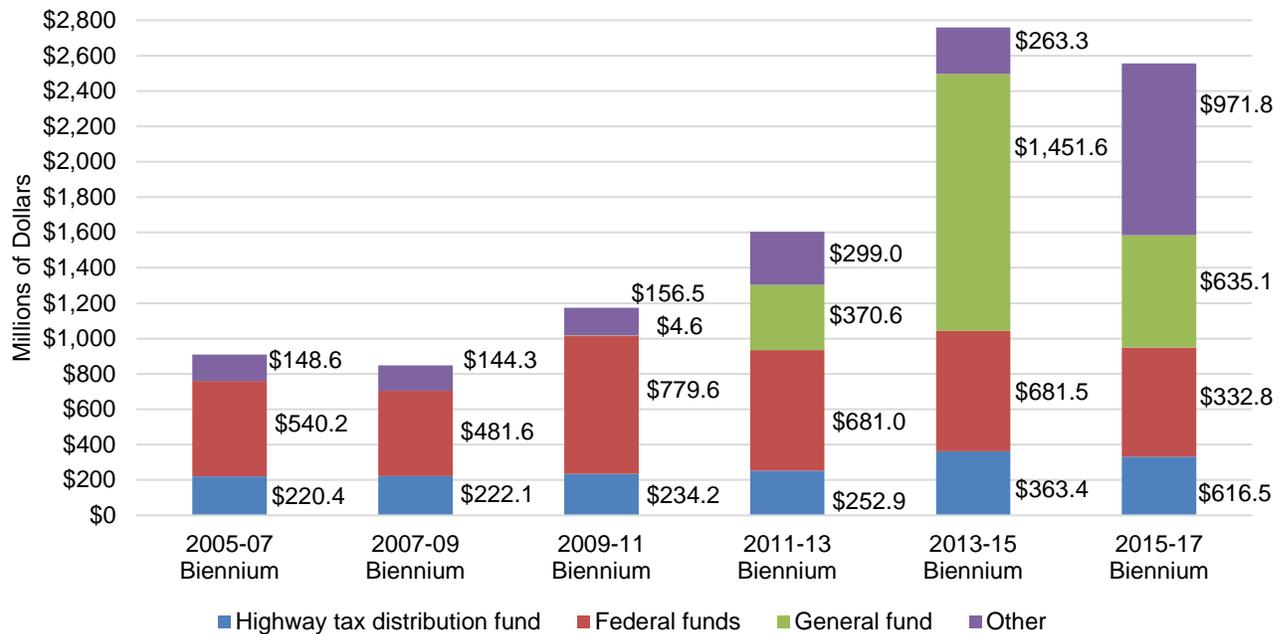
Motor vehicle registration fees are assessed based on Chapter 39-04 and vary by vehicle type and vehicle weight. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of an initial fee of \$10 for plates. Motor vehicle registration fees were last changed in 2005, which increased fees for all weight classes by \$10. Attached is a comparison ([Appendix C](#)) of motor vehicle registration fees, motor fuel tax rates, and fees for driver's license renewals of surrounding states.

HISTORY OF DEPARTMENT OF TRANSPORTATION REVENUE

The following table and chart compares DOT revenues from the 2005-07 biennium through the 2015-17 biennium.

State Highway Fund Revenues (Amounts Shown in Millions)							
Source	2005-07 Biennium	2007-09 Biennium	2009-11 Biennium	2011-13 Biennium	2013-15 Biennium	2015-17 Biennium	2017-19 Biennium Estimate
Highway tax distribution fund	220.4	222.1	234.2	252.9	363.4	332.8	321.5
Federal funds	540.2	481.6	779.6	681.0	681.5	616.5	673.4
General fund			4.6	370.6	1,451.6	635.1	
Other ¹	148.6	144.3	156.5	299.0	263.3	971.8	208.0
Total	909.2	848.0	1,174.9	1,603.5	2,759.8	2,556.2	1,202.9

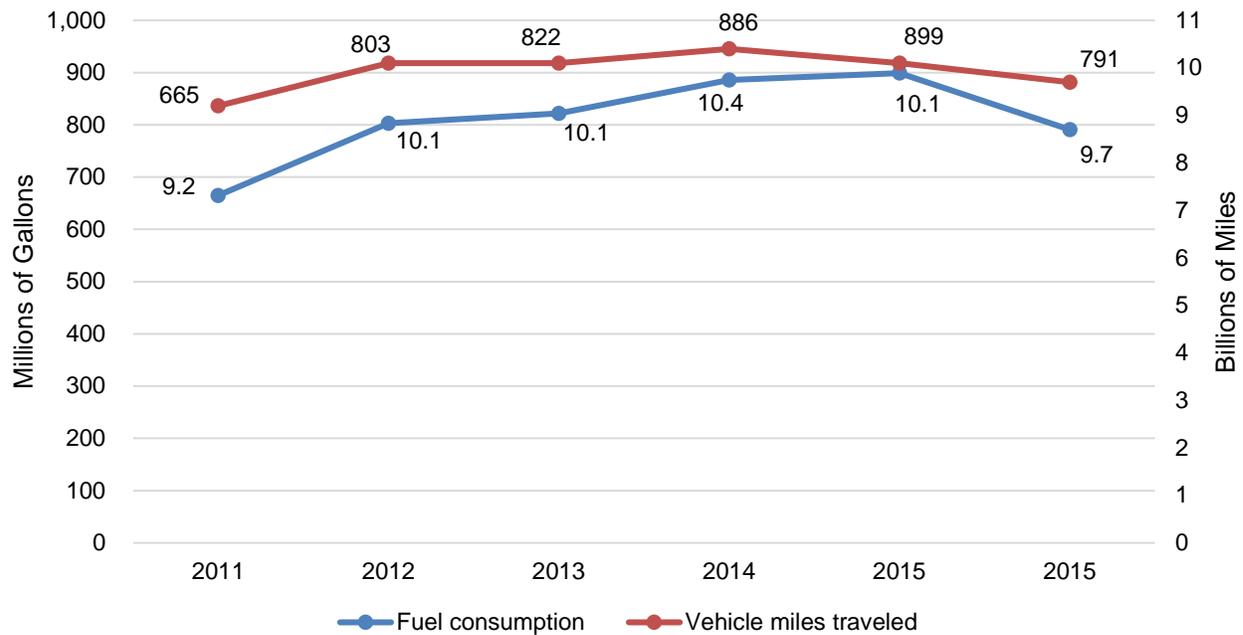
¹Other revenue sources include new and used dealer fees, truck regulatory driver's license fees, fleet services, credit card fees, record access fees, hay bids, road materials, and other miscellaneous fees. The amount shown for the 2015-17 biennium includes funding from the strategic investment and improvements fund for enhanced highway investments and distributions to counties.



HISTORY OF FUEL CONSUMPTION AND MILES TRAVELED IN NORTH DAKOTA

The following table and chart compares annual fuel consumption to vehicle miles traveled from calendar years 2011 through 2016.

Fuel Consumption and Miles Traveled (Calendar Years) (Amounts Shown in Millions)						
State	2011	2012	2013	2014	2015	2016
Fuel consumption	665	803	822	886	899	791
Vehicle miles traveled	9,166	10,093	10,100	10,437	10,079	9,740



TRANSPORTATION FUNDING MECHANISMS AVAILABLE TO POLITICAL SUBDIVISIONS

Political subdivisions receive funding through special state funding distributions, allocations from the highway tax distribution fund revenues, property tax assessments, other sales and use taxes, bonding/financing, and federal funds received through DOT.

TRANSPORTATION FUNDING MECHANISMS AVAILABLE TO PUBLIC TRANSPORTATION PROVIDERS

Public transportation providers receive funding from special state funding distributions, the public transportations share of highway tax distribution fund revenues through DOT, user fees, bonding/financing, and federal funds from the Federal Transit Administration.

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Review current funding mechanisms and options used by DOT, political subdivisions, and public transportation providers.
2. Compare other states' funding mechanisms and options for transportation funding.
3. Review alternative revenue sources other than existing highway tax distribution fund revenues.
4. Review motor fuel consumption and other statistical information regarding infrastructure usage.
5. Receive information from DOT regarding the history of funding available to match federal funds available to the state.
6. Develop recommendations and any necessary legislation to implement the recommendations.
7. Prepare a final report for presentation to the Legislative Management.