Prepared by the North Dakota Legislative Council
staff for the Taxation Committee
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MINERAL RESOURCE IMPACT AND TAXATION ISSUES - BACKGROUND MEMORANDUM

Section 2 of 2009 Senate Bill No. 2051 directs a very broad study of impact and taxation issues relating to production of mineral resources in North Dakota, specifically including:

1. Development of relatively new industries for extraction and production of minerals such as uranium, potash, and other minerals not previously produced on a significant economic scale;
2. Environmental, economic, and governmental impact of mineral production;
3. Infrastructure maintenance and development relating to mineral production;
4. Employment opportunities and issues relating to mineral production;
5. Comparison of mineral tax structures in North Dakota and other states; and
6. Water supplies and demands relating to mineral production.

OIL AND GAS TAXES

Oil and Gas Gross Production Tax

As enacted in 1953, the oil and gas gross production tax was a tax of 4.25 percent of gross value at the well of oil and gas. In 1957 the rate of the tax was increased to the current rate of 5 percent of gross value at the well of oil and gas. The total net proceeds collected from the gross production tax increased from $306,000 in fiscal year 1954 to more than $430 million in the 2007-09 biennium.

From 1957 to 1981 the distribution formula for proceeds of the gross production tax remained the same in North Dakota Century Code Section 57-51-15. During that time, the first 1 percent of gross value at the well of oil and gas produced was credited to the state general fund. After deduction of the state general fund's 1 percent share in each county, the balance was distributed as follows:

1. The first $200,000, 75 percent to the producing county and 25 percent to the state general fund.
2. The next $200,000, 50 percent to the producing county and 50 percent to the state general fund.
3. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

In 1981 the Legislative Assembly amended the distribution formula. This amendment did not change the disposition of the state general fund's 1 percent share. Remaining tax revenue from oil and gas produced in each county was distributed as follows:

1. The first $1 million, 75 percent to the producing county and 25 percent to the state general fund.
2. The next $1 million, 50 percent to the producing county and 50 percent to the state general fund.
3. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

The overall effect of the 1981 amendment was to give each producing county an increase of up to $600,000 per year.

In 1981 caps, or maximums, were introduced to restrict revenues producing counties could receive from the gross production tax for each year of the 1981-83 biennium. The caps were based on the population of each county and increased in the second year of the biennium. At the close of fiscal year 1983, these caps were scheduled to expire. The amounts allocated to a county which exceeded the cap imposed were instead deposited in the state general fund. The maximum amount that a producing county could receive in fiscal year 1983 was:

1. For counties with a population of 3,000 or fewer - $3.8 million.
2. For counties with a population from 3,001 to 5,999 - $4 million.
3. For counties with a population of 6,000 or more - $4.5 million.

The manner in which revenues received by a county are allocated within the county was also changed in 1981. Before 1981, Section 57-51-15 provided for allocation of 40 percent of county revenues to the county road and bridge fund, 45 percent to school districts within the county, and 15 percent to incorporated cities within the county. After the 1981 amendment, county revenues were distributed 45 percent to the county general fund, 35 percent to the school districts within the county, and 20 percent to the incorporated cities within the county. The 1981 amendment also imposed caps upon revenues that may be received by school districts and cities. School districts were limited to a maximum of 70 percent of the county per student cost times the number of students in attendance or in the school census, whichever was greater, unless the district had an average daily attendance or school census fewer than 400, in which case that district could receive up to 120 percent of the county average per student cost times the number of students in attendance or in the school census, whichever was greater. Incorporated cities were limited to a distribution not exceeding $500 per capita in any fiscal year. Amounts exceeding the caps for school districts or cities reverted to the county general fund.

In 1983 caps for county revenues from oil and gas gross production taxes were extended through the 1983-85 biennium and the maximum amounts that a producing county could receive in a fiscal year were adjusted as follows:

1. For counties with a population of 3,000 or fewer - $3.9 million.
2. For counties with a population from 3,001 to 5,999 - $4.1 million.
3. For counties with a population of 6,000 or more - $4.6 million.

A 1985 amendment made the caps on county revenue from oil and gas gross production taxes permanent at the rates established set in the 1983 bill.

A 1989 amendment allocated up to $5 million per biennium from the first 1 percent of oil and gas gross production tax revenues to the oil and gas impact grant fund and provided a continuing appropriation of the amount for allocation by the Energy Development Impact Office to oil and gas-impacted political subdivisions.

A 2005 amendment increased the oil and gas gross production tax allocation for the oil and gas impact grant fund from $5 million to $6 million per biennium beginning with the 2007-09 biennium.

In 2007 the Legislative Assembly amended the distribution formula in Section 57-51-15. This amendment did not change the disposition of the state general fund's 1 percent share. Remaining tax revenue from oil and gas produced in each county was distributed as follows:

1. The first $1 million, entirely to the county.
2. The second $1 million, 75 percent to the producing county and 25 percent to the state general fund.
3. The third $1 million, 50 percent to the producing county and 50 percent to the state general fund.
4. All remaining revenue, 25 percent to the producing county and 75 percent to the state general fund.

The overall effect of the 2007 amendment was to give each producing county an increase of up to $750,000 per year.

A 2007 amendment allowed a county that reaches the annual cap on oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal aid road, and county road purposes. Any of the additional $1 million received by the county is not for allocation to political subdivisions within the county but must be credited entirely to the county general fund.

A 2009 amendment by House Bill No. 1304, as amended by House Bill No. 1324, significantly increases allocation of oil and gas gross production taxes to political subdivisions and the oil and gas impact grant fund. From the tax equal to the first 1 percent of gross value at the well of oil production, a direct allocation of $500,000 is created for a city in an oil-producing county which has a population of 7,500 or more and more than 2 percent of its employment engaged in the mining industry. The allocation is increased to $1 million if the city's population exceeds 7,500 and employment in the mining industry exceeds 7.5 percent of its employment. Also from the tax equal to the first 1 percent of gross value of oil produced, the biennial allocation to the oil and gas impact grant fund is increased from $6 million to $8 million per biennium. The bill makes several changes in allocations of oil and gas gross production tax revenue to political subdivisions. The bill increases from $1 million to $2 million the initial amount of tax revenue allocated 100 percent to the producing county. The bill removes the caps on tax revenue allocations to counties but provides that any amount exceeding $18 million of annual revenue to a county is allocated 10 percent to the county and 90 percent to the state general fund. The bill requires a county to levy at least 10 mills for county road and bridge, farm-to-market and federal aid road, and county road purposes to receive any allocation of oil and gas gross production tax revenues. The bill restructures allocation of revenues within counties to hold school district allocations at approximately the level provided under existing law and establishes a county infrastructure fund for deposit of funds exceeding $5,350,000 allocated to the county. Revenues allocated to a county infrastructure fund are allocated to the county and to cities in the same proportion as existing law, but the 35 percent share allocated to school districts under existing law is instead allocated to the board of county commissioners to provide grants to or for the benefit of townships or school districts. Grants are available on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of county infrastructure fund revenues to offset oil and gas development impact to township roads or other infrastructure needs. The bill provides that within 60 days after the end of each fiscal year, the board of county commissioners of a county that has received oil and gas gross production tax revenue allocations must file a report with the Tax Commissioner showing the amount received by the county, the amount expended for each purpose to which the funds were devoted, the share of county property tax revenue expended for each of those purposes, and the amount of unexpended funds remaining at the end of the fiscal year. The report must also show the amount available in the county infrastructure fund, the amount allocated to each organized township or school district and the amount expended from that allocation by that township or school district, the amount expended on behalf of unorganized townships, and the amount in the county infrastructure fund which remained unexpended at the end of the fiscal year. The bill requires the Tax Commissioner to compile the information from the reports and provide a report to the Legislative Management.

Oil Extraction Tax

On November 4, 1980, the voters of the state approved initiated measure No. 6 on the general election ballot and established an oil extraction tax as a companion tax to the oil and gas gross production tax that existed since 1953. The oil extraction tax rate was established at 6.5 percent of the gross value of oil at the well and has remained at that rate, except for full or partial exemptions. The initial extraction tax law provided exemptions for oil exempt from gross production taxes, up to 100 barrels per day of oil owned by a royalty owner, and oil from a stripper well, defined as a well producing 10 barrels or less of oil per day.

In 1987 the 10-barrel-per-day limitation for stripper well properties was left in place for wells of a depth of 6,000 feet or less, but the limit was increased to 15 barrels per day for wells of a depth of 6,000 feet to 10,000 feet and 20 barrels per day for wells of a depth of more than 10,000 feet. For wells drilled and completed after April 27, 1987, and for qualifying secondary or tertiary recovery projects, the rate of tax was reduced from 6.5 percent to 4 percent of gross value at the well. In addition to the rate reduction, production from new wells completed after April 27, 1987, was given a full extraction tax exemption for the first 15 months of production. A trigger provision was included so that the rate would return to 6.5 percent if the average price of crude oil between June 1 and October 31 of any year is $33 per barrel or more. The royalty owner exemption was eliminated in 1987.

In 1989 an exemption was created for production during the first 12 months after a well has been worked over. The exemption required filing of a notice of intent to begin a work-over project with the Industrial Commission before beginning the project. A qualifying project was required to have a cost of at least $65,000, which was reduced to $30,000 if production increased by at least 50 percent during the first two months after completing the project. The exemption was limited to wells producing no more than 50 barrels of oil before beginning the project. The trigger mechanism was applied to the work-over exemption.

In 1991 the trigger mechanism was adjusted to provide that if the oil price exceeded $33 per barrel for any period of five consecutive months, the exemptions and rate reductions would not apply, rather than being based on June to October prices. A reverse trigger was also instituted to reinstate the reduced rates and exemptions when the price for a barrel of crude oil is less than $33 for any consecutive five months. Other 1991 legislation provided for a 5-year exemption for oil produced from a secondary recovery project and a 10-year exemption for oil from a tertiary recovery project. The legislation required Industrial Commission certification of the project as qualifying for the exemption. The exemptions apply only to incremental production, defined as the total amount of oil produced minus the amount of oil that had been produced prior to the recovery project.

In 1993 the exemption for the first 12 months of production after a work-over project was amended to eliminate the minimum investment of $30,000 if production is increased at least 50 percent in the first two months after completing the project. The change retained the $65,000 level of spending that would qualify the project for exemption if production is increased by less than 50 percent. The bill also reduced the tax rate from 6.5 percent to 4 percent for production from a worked-over well after the 12-month exemption period.

In 1995 a 24-month oil extraction tax exemption was created for production from a horizontal well. The bill created a 10-year exemption for production of oil from a well that has been inactive for two years and a 9-month exemption for production from a horizontal reentry well. The inactive well and horizontal reentry well exemptions were made subject to the trigger mechanism. The limit on stripper well classification for wells deeper than 10,000 feet was increased from 20 barrels to 30 barrels per day. Other 1995 legislation required certification by the Industrial Commission of qualifying status for wells eligible for exemptions or rate reductions.

In 1997 legislation was enacted to grant a five-year extraction tax exemption for production from new wells within the boundaries of an Indian reservation on tribal trust lands or land owned by a tribe.

In 2001 the trigger provision for exemptions and rate reductions was amended to clarify when the trigger was to become effective. All rate reductions and exemptions subject to the trigger provision would become ineffective if the average price of a barrel of crude oil exceeded the trigger price for each month in any consecutive five-month period. Average price was defined as the monthly average of the daily closing price for a barrel of West Texas intermediate Cushing crude oil minus $2.50. Trigger price was defined as $35.50 per barrel, as indexed for inflation.

In 2003 an Oil and Gas Research Council was created and an oil and gas research fund was established with a continuing appropriation provided. A temporary exemption from gross production tax was provided for gas produced from shallow gas wells, with an expiration date of June 30, 2007. The two-year inactive well exemption was amended to clarify the definition of a two-year inactive well and to provide an 18-month provision to qualify the well for an exemption to be consistent with other oil extraction tax exemptions. The work-over well exemption was amended to remove the requirement that a notice of intention must be filed before a work-over project is commenced to qualify for an exemption.

In 2005 the Legislative Assembly provided for a sales and use tax exemption for carbon dioxide used for the enhanced recovery of oil or natural gas.

Legislation in 2007 provided an oil extraction tax reduction to 2 percent for the first 75,000 barrels of oil during the first 18 months after completion from a horizontal well drilled and completed in the Bakken Formation from July 1, 2007, through June 30, 2008. The gross production tax exemption for shallow gas was made permanent for the first 24 months of production. An increase was provided from $1.3 million to $3 million per biennium in the amount of oil extraction tax revenues to be deposited in the oil and gas research fund.

The Governor was given authority by 2007 Senate Bill No. 2419 to enter agreements with the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation. The statutory provisions require the state oil and gas gross production tax must apply in full to all wells within the Fort Berthold Reservation and the state oil extraction tax for trust lands on the Fort Berthold Reservation may not exceed a 6.5 percent rate but may be reduced through negotiation of the agreement. All revenues and exemptions from all oil and gas gross production and oil extraction taxes attributable to production from trust lands on the Fort Berthold Reservation must be evenly divided between the Three Affiliated Tribes and the state. For production from non-trust lands on the Fort Berthold Reservation, the state must receive 80 percent and the Three Affiliated Tribes must receive 20 percent of total oil and gas gross production tax collections in lieu of application of the Three Affiliated Tribes' fees and taxes related to production on such lands. The state's share of revenue under the agreement is subject to allocation among political subdivisions within the boundaries of the reservation. The first $700,000 of the state's share of tax revenues from oil produced from wells within the exterior boundaries of the Fort Berthold Reservation must be transferred to the permanent oil tax trust fund. The Governor entered an agreement with the Three Affiliated Tribes in compliance with the statutory requirements, effective July 1, 2008. It appears the legislation and agreement have had the desired effect. Before July 1, 2008, there was no drilling activity on the Fort Berthold Reservation. Since July 1, 2008, 163 drilling permits have been issued, 131 wells have been completed, and of 56 drilling rigs operating in the state as of October 2009, 11 are operating on the Fort Berthold Reservation.

A 2009 amendment by House Bill No. 1235 provides a contingent rate reduction in the oil extraction tax which reduces the oil extraction tax rate for horizontal wells from 6.5 percent to 2 percent during the time the rate reduction is in effect. Existing law provides a complete oil extraction tax exemption that triggers into effect if the price of oil for five consecutive months remains below the trigger price. April 2009 would have been the fifth consecutive month below the trigger price, but the average price for April rose to an amount exceeding the trigger price which meant that the exemptions under existing law did not trigger into effect. Because the exemptions did not trigger into effect, the rate reduction provided by House Bill No. 1235 became effective May 1, 2009, and will remain in effect until the first day of the month following a month in which the average price of a barrel of crude oil exceeds $70. It appears that October 2009 will be the final month the rate reduction applies because the average price of a barrel of crude oil has been well in excess of $70. The rate reduction can trigger into effect again if the average price for a month drops below $55. The rate reduction applies to oil produced during the first 18 months after completion for a horizontal well and is limited to the first 75,000 barrels or the first $4.5 million of gross value at the well of oil produced from the well. If the rate reduction is effective on the date of completion of a well, the rate reduction applies to production from that well for up to 18 months after completion, even if the price of oil rises to more than $70. If the rate reduction is ineffective on the date of completion of a well, the rate reduction does not apply to production from that well at any time.

A 2009 amendment by Senate Bill No. 2051 increases from $3 million to $4 million per biennium the share of oil and gas tax revenues deposited in the oil and gas research fund.

Oil Extraction Tax Allocation

In 1980 initiated measure No. 6, oil extraction tax revenues were to be allocated 45 percent to the state general fund, 45 percent to education funding, and 10 percent to water pipeline and resources trust fund uses. The allocation formula was amended in 1981 to allocate 30 percent to the state general fund, 60 percent to education funds, and 10 percent to water pipeline and resources trust fund uses. In 1983 the formula was amended to allocate 90 percent to the state general fund and 10 percent to education funds. In 1995 the allocation was changed to 60 percent to the state general fund, 20 percent to education funding, and 20 percent to water pipeline and resources trust fund uses.

In 1997 a permanent oil tax trust fund was established. The provision required that all general fund revenue from oil and gas gross production tax and oil extraction tax exceeding $71 million in a biennium must be transferred to the permanent oil tax trust fund.

In 2003 an oil and gas research fund was established to be allocated up to $500,000 in the 2003-05 biennium. The fund was to be allocated up to $1.3 million per biennium after the 2003-05 biennium. In 2007 the allocation to the fund was increased to a maximum of $3 million per biennium, and in 2009 it was increased to $4 million per biennium.

In 2007 a constitutional amendment was placed on the 2008 general election ballot to make the permanent oil tax trust fund a constitutional trust fund. The measure would have provided that any general fund revenue from oil and gas taxes exceeding

$100 million during a biennium must be deposited in the permanent oil tax trust fund. The measure would have required a vote of three-fourths of the members elected to each house of the Legislative Assembly to approve expenditures from the permanent oil tax trust fund. The measure was disapproved by the voters, with about 64 percent voting for disapproval.

In 2009 a constitutional amendment (House Concurrent Resolution No. 3054) was placed on the 2010 general election ballot to establish the legacy fund as a constitutional trust fund. The measure would require 30 percent of total revenue derived from taxes on oil and gas production or extraction to be transferred to the legacy fund. The principal and earnings of the legacy fund would not be permitted to be expended until after June 30, 2017. The measure provides that an expenditure of principal after June 30, 2017, would require a vote of at least two-thirds of the members elected to each house of the Legislative Assembly and not more than 15 percent of the principal of the legacy fund could be expended during a biennium. The measure provides for transfer of earnings of the legacy fund accruing after June 30, 2017, to the state general fund at the end of each biennium. If approved by the voters, the measure would become effective for oil and gas production after June 30, 2011.

Total Oil and Gas Tax Collections 2007-09

During the 2007-09 biennium, total oil and gas tax collections for North Dakota totaled more than $799 million, of which over $430 million was collected from gross production taxes and over $368 million was collected from oil extraction taxes. The state's share of gross production taxes was over $555 million, with more than $334 million from gross production taxes and more than $220 million from oil extraction taxes. Of the state's share of oil and gas taxes, $71 million was deposited into the general fund and over $484 million was deposited into the permanent oil tax trust fund. During the first four months of the 2009-11 biennium, oil production and tax revenue is running in excess of projections, and the state general fund will have received its maximum of $71 million for the biennium by the end of October 2009.

COAL INDUSTRY TAXES

Coal Severance Tax

Enactment of 1975 Senate Bill No. 2031 created a coal severance tax and a coal impact aid program. The 1975 Legislative Assembly also passed House Bill No. 1221, which created a privilege tax on coal conversion facilities.

Senate Bill No. 2031 (1975) was a temporary law and was essentially reenacted in 1977, again as a temporary law. In 1979 the coal severance tax became permanent law. Under the 1975 law, the coal severance tax rate was set at 50 cents per ton plus an amount determined by an escalator clause that provided for an increase in the tax of one cent per ton for every three-point increase in the index of wholesale prices for all commodities as prepared by the United States Department of Labor, Bureau of Labor Statistics. The 1977 Legislative Assembly increased the base rate of the tax to 65 cents per ton plus an amount determined by application of an escalator clause equal to one cent per ton for each one-point increase in the index of wholesale prices for all commodities. In 1979 the coal severance tax was set at a base rate of 85 cents per ton with an escalator clause that would increase the rate of tax by one cent per ton for every four-point increase in the index of wholesale prices for all commodities. It was provided that, even though the wholesale price index may decline, the rate of severance tax would not be reduced. The formula for determining the coal severance tax rate remained as passed in 1979, and the rate imposed reached a high of $1.04 per ton, which remained in place until passage of 1987 House Bill No. 1065. The 1987 legislation reduced the general coal severance tax rate to 75 cents per ton, eliminated the escalator provision, and imposed an additional separate tax of two cents per ton with the proceeds of the separate tax allocated to the lignite research fund. The rate of tax was unchanged from 1987 to 2001.

Concerns about the effect of Wyoming and Montana coal imports led to enactment of 1997 and 1999 legislation attempting to tax out-of-state coal to be burned in North Dakota which was declared unconstitutional. Coal industry taxes were restructured in 2001 to place a greater tax emphasis on burning coal in North Dakota generating plants and reduce severance taxes for coal mined in North Dakota. Senate Bill No. 2299 (2001) reduced the coal severance tax rate from 75 cents to 37.5 cents per ton and retained the two cent per ton research and development tax. The bill increased by .4 mill per kilowatt-hour the coal conversion tax for electrical generating plants based on nameplate capacity of the facility. The bill adjusted the coal severance and coal conversion tax allocation formulas to retain approximately equal allocations among state and political subdivision recipients as were allocated under previous law. The bill reduced the generation capacity of an electrical generating plant to be classified as a coal conversion facility from 120,000 kilowatts to 10,000 kilowatts. The bill provided that each county may receive not less than it received in the previous calendar year under the coal conversion tax, and for a county in which is located a facility that was not a coal conversion facility before the effective date of this bill, that county must receive an additional amount that is at least as much as was received in property taxes for that facility for taxable year 2001.

The coal severance tax is in lieu of sales or use taxes. Any coal that is exempt from the severance tax is subject to sales and use taxes unless a sales or use tax exemption exists. Severance tax exemptions are provided for coal used primarily for heating buildings and coal used by the state or any political subdivision. Purchases by the state or a political subdivision are exempt from the sales tax, but coal used for heating privately owned buildings is not exempt from the sales tax. An additional severance tax exemption was created in 1985 by enactment of Section 57-61-01.4, which provides an exemption for coal used in agricultural processing or sugar beet refining plants located in North Dakota or adjacent states. Coal exempted for these purposes is exempt from sales and use taxes under Section 57-39.2-04(44). Section 57-61-01.3, also created in 1985, provides that the severance tax rate is reduced by 50 percent if the coal is to be burned in a cogeneration facility. Under Section 57-61-01.7, coal mined for out-of-state shipment is subject to 30 percent of the severance tax rate and is eligible for waiver by the county of all or part of the 70 percent local share of the tax.

All severance taxes, penalties, and interest collected by the Tax Commissioner are transferred to the State Treasurer within 15 days of receipt and are credited to a special fund in the state treasury called the coal development fund. The revenue in the coal development fund is allocated under a detailed formula contained in Section 57-62-02. Thirty percent of the revenue in the coal development fund is to be deposited in a permanent trust fund in the state treasury known as the coal development trust fund. This fund is held in trust and administered by the Board of University and School Lands for loans to coal-impacted counties, cities, and school districts. Under Section 57-61-01.5(2), 70 percent of deposits in the trust fund are to be transferred to the lignite research fund. Seventy percent of the revenue in the coal development fund is allocated to coal-producing counties in the proportion that the number of tons of coal severed in each county bears to the total number of tons of coal severed in the state.

Of the 30 percent portion of coal development fund money which is distributed to coal-producing counties, 30 percent is paid by the county treasurer to incorporated cities of the county based upon population, 40 percent is deposited in the county general fund, and 30 percent is apportioned to school districts within the county based on average daily membership of each school district. The distribution formula within counties also provides for recognition of impact on surrounding areas not within the county. If the tipple of a currently active coal mining operation in a county is within 15 miles of another county in which no coal is mined, revenue apportioned from that coal mining operation is apportioned according to the same formula as county revenues with inclusion of cities, school districts, and the general fund of the non-coal-producing county within certain geographical limits. An amendment in 2009 House Bill No. 1015 provides for payment from legislative appropriation beginning in 2011 to a coal-producing county for 50 percent of the severance tax revenue loss because of payments required to a non-coal-producing county under the "tipple" provision.

Coal Conversion Privilege Tax

The privilege tax on coal conversion facilities is imposed by Section 57-60-02. A coal conversion facility is defined as an electrical generating plant that converts coal into electrical power and has a capacity of 10,000 kilowatts or more, a facility that uses over 500,000 tons of coal per year to be converted into other products, a coal beneficiation plant, or a gas-fired electrical generating facility powered by gas produced from coal. Differing tax rates are imposed on different types of coal conversion facilities.

As enacted in 1975, the coal conversion facilities privilege tax on electrical generating plants was at a rate of one-fourth of one mill per kilowatt-hour of electricity produced, and the tax on coal gasification plants was the greater of 2.5 percent of gross receipts or 10 cents per 1,000 cubic feet of synthetic natural gas. In 1983 an additional one-fourth of one mill per kilowatt-hour tax was imposed on electrical generating plants. In 1985 the floor on the tax for coal gasification plants was increased from 10 cents to 15 cents per 1,000 cubic feet of synthetic natural gas. In 1987 the basis of the tax for electrical generating plants was changed from kilowatt-hours of electricity produced to 60 percent of the installed capacity of each generating unit times the number of hours in the taxable period, and for damaged units a reduced tax rate based on cost of repairs was established to be in effect until the unit is capable of generating electricity. Other 1987 legislation reduced the alternative tax for coal gasification plants from 15 cents to 7 cents for each 1,000 cubic feet of synthetic natural gas and provided an exemption for any synthetic natural gas production in excess of 110 million cubic feet per day. In 1989 separate tax treatment was provided for coal beneficiation plants, providing an alternative tax of 20 cents per ton of beneficiated coal or 1.25 percent of gross receipts, whichever is greater. In 1991 legislation was enacted to provide a five-year exemption for new electrical generating plants from all but 35 percent of the one-fourth of one mill tax based upon production capacity of the generating unit, and the 35 percent remaining tax is allocated entirely to the county and may be eliminated by the board of county commissioners.

For electrical generating plants, the conversion tax was at a rate of one-half of one mill on each kilowatt-hour of electricity produced for the purpose of sale. This tax was divided into two separate one-fourth of one mill taxes, revenues from each of which were subject to different allocations. For coal gasification plants, the rate of tax was either 2.5 percent of gross receipts or seven cents per 1,000 cubic feet of synthetic natural gas, whichever was greater. A provision enacted in 1985 provided that gross receipts from the sale of a capital asset are not included in gross receipts for purposes of the coal conversion tax. Provisions added in 1985 exempted from gross receipts any financial assistance provided by the federal government. A 1987 amendment exempted byproducts of the gasification process, to a maximum exclusion of 20 percent of all gross receipts of a facility. The maximum exclusion for byproducts was increased 20 percent to 35 percent from 1997 through 2000. Senate Bill No. 2196 (1997) also exempted sales of carbon dioxide for oil and gas recovery from the gross receipts tax. Senate Bill No. 2339 (1997) extended the property tax exemption for a pipeline to transport carbon dioxide to 10 years after initial operation, rather than commencement of construction, and allowed the exemption to apply to a pipeline carrying carbon dioxide outside the state.

Under the coal conversion tax, each coal conversion facility is classified as personal property and is exempt from property taxes, except taxes on the land upon which the facility is located. The coal conversion tax is in lieu of property taxes on the facility.

Allocation of coal conversion tax revenues is made annually on or before July 15 of each year. Revenue from one-fourth of one mill of the tax on electrical generating plants is deposited in the state general fund. Revenue from all remaining coal conversion taxes is allocated 15 percent to the producing county and 85 percent to the state general fund. Coal conversion tax revenues to the state general fund are estimated to be approximately $45 million for the 2009-11 biennium.

Revenue allocated to counties from the coal conversion tax is allocated within the county 40 percent to the county general fund, 30 percent to cities in the county according to population, and 30 percent to school districts in the county on an average daily membership basis.

POTENTIAL NEW DEVELOPMENT OF OTHER MINERALS

Activity in the state indicates an interest in development of uranium, potash, and perhaps other minerals that have not previously been produced in significant amounts in North Dakota. Current North Dakota law does not provide a regulatory and taxation framework for new mineral industries. The Industrial Commission adopted rules effective January 1, 2009, governing in situ leach mining for uranium. The rules provide a thorough regulatory framework for uranium mining to protect water supplies, protect the environment and public, and provide for land reclamation while allowing optimum recovery of mineral resources. However, there is no law or rule relating to taxation of uranium extraction or for extraction of any minerals other than oil, gas, and coal. The committee should obtain information on current activity or interest in development of new mineral resources and then examine how those minerals are regulated and taxed in other states.

ENVIRONMENTAL, ECONOMIC, AND GOVERNMENTAL IMPACT OF MINERAL PRODUCTION

It is unclear what aspects of environmental, economic, and governmental impact of mineral production are intended to be reviewed. Suggestions of committee members or representatives of government, industry, or other groups may identify impact issues the committee would like to explore.

INFRASTRUCTURE MAINTENANCE AND DEVELOPMENT

Legislation enacted in 2009 should provide a substantial enhancement to political subdivision infrastructure maintenance and development. As information becomes available on the effects of the additional funding provided to political subdivisions, consideration can be given to whether the desired results are being achieved. Representatives from the Department of Transportation, local governments, and the Energy Development Impact Office should be requested to address the committee regarding state and local infrastructure issues.

EMPLOYMENT OPPORTUNITIES AND ISSUES

Representatives of industry and state and local government should be requested to point out employment opportunities and issues they deem worthy of committee consideration.

MINERAL TAX STRUCTURES IN OTHER STATES

Mineral tax structures are unique in each state in which mineral production occurs. It would not be appropriate to try to replicate a mineral tax structure of another state. However, it is significant to determine whether North Dakota tax policy encourages or discourages investment by mineral production companies in this state in comparison with tax policy in neighboring states.

WATER SUPPLIES AND DEMANDS OF MINERAL PRODUCTION

Water demands of mineral production will be a growing issue of consideration. The oil industry has greatly increased its efficiency and speed in completing horizontal wells in the Bakken and Three Forks Formations. Very substantial amounts of water are needed for horizontal well drilling and completion and a factor that may to hinder enhanced drilling operations would be lack of sufficient water supplies.