



# North Dakota Legislative Council

Prepared for Senator Hogue  
LC# 27.9195.01000  
May 2026

## **POLITICAL SUBDIVISION NONCOMPLIANCE WITH STATE LAW - ROLES OF THE LEGISLATIVE ASSEMBLY, STATE AUDITOR, AND ATTORNEY GENERAL**

This memorandum provides information regarding enforcement of political subdivision compliance with state law, focused specifically on the roles of the Legislative Assembly, the State Auditor, and the Attorney General. The memorandum also identifies potential considerations that may be useful if additional statutory enforcement mechanisms are contemplated.

### **BACKGROUND**

On December 9, 2025, the State Auditor presented the Stark County Audit Report<sup>1</sup> for the year ended December 31, 2023, to the Legislative Audit and Fiscal Review Committee. The report identified four deficiencies in internal control the State Auditor's office classified as material weaknesses. Among these deficiencies, the report noted Stark County levied 25.88 mills, generating \$5.4 million in revenue, despite the requirements of North Dakota Century Code Sections 11-23-02 and 57-15-31, which required Stark County to levy zero mills due to General Fund reserves exceeding the statutory limit of 75 percent of annual appropriations for the fund. The report also noted Stark County used a General Fund cash reserve balance of \$9.2 million during the budgeting process, while the actual balance totaled \$21.6 million.

The State Auditor recommended Stark County implement procedures to ensure compliance with Sections 11-23-02 and 57-15-31, and the county agreed with the recommendations.

### **LEGISLATIVE ASSEMBLY**

The Legislative Assembly does not directly enforce state law against political subdivisions. Rather, the Legislative Assembly's role is structural and indirect and includes establishing the legal framework that enables effective enforcement or legislative oversight. There are several statutory enforcement mechanisms that relate to political subdivision compliance with state law, each with its own nuances based on the specific state law and political subdivision action involved. For purposes of this memorandum, the discussion in this section is limited to statutory enforcement mechanisms and committee oversight relevant to political subdivision compliance with property tax levy limitations, including provisions at issue in the Stark County Audit Report. A political subdivision empowered by law to levy property taxes is referred to as a taxing district throughout this section.

#### **Statutory Enforcement Mechanisms for Taxing District Compliance with Property Tax Levy Limitations**

Under state law, the amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute, including the mill levy limitations under various provisions in Chapter 57-15, the interim fund limitation under Section 57-15-27, the taxing district levy determination provisions, including those under Sections 57-15-05, 57-15-07, 57-15-11, and 57-15-31, and the recently enacted 3 percent limitation on growth of a taxing district's levy in dollars under Section 57-15-01.2. While each of the levy limitation provisions does not contain a specific enforcement provision, enforcement mechanisms exist within the property tax code which seek to prevent a taxing district from levying more than the limitations prescribed by statute and provide aggrieved taxpayers with a remedy to address

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<sup>1</sup> North Dakota Office of the State Auditor, *Stark County Audit Report*, for the year ended December 31, 2023 (September 29, 2025).

impermissibly excessive tax levies. It is important to note each taxing district is responsible for ensuring its actions comply with state law, and taxing district representatives should consult the taxing district's legal counsel as needed for guidance.

### **Role of the County Auditor in Property Tax Rate Determination**

Section 57-15-02 relates to the determination of property tax rates and charges a county auditor with the responsibility to fix the rate of all property taxes levied by a taxing district within the limitations prescribed by statute. The section further provides that if a taxing district levies a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor is required to extend only such amount of tax as the prescribed maximum legal rate of levy will produce.

The Attorney General has provided guidance on the meaning of a "limitation prescribed by statute," particularly in the context of statutory interim or reserve fund limitations, such as those at issue in the Stark County Audit Report. The Stark County Audit Report found Stark County failed to comply with Sections 11-23-02 and 57-15-31 when determining the county General Fund levy because the General Fund levy exceeded the statutory limit of 75 percent of annual appropriations for the cash reserve for the General Fund in Section 11-23-02. This 75 percent limitation also is present in Section 57-15-27, which provides that the "interim fund" of a taxing district, other than a school district, may not be "in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources."

In a 1979 opinion,<sup>2</sup> the Attorney General analyzed the 75 percent interim fund limitation in Section 57-15-27<sup>3</sup> and opined that the "interim fund" referenced in Section 57-15-27 is the same as the "reserve funds" referenced in Sections 57-15-31 relating to the determination of tax levies, 57-15-07 relating to city tax levies, 57-15-05 relating to county tax levies, and 57-15-11 relating to park district tax levies. Further, in 1993, the Attorney General analyzed Sections 11-23-02 and 57-15-27 and clarified the interim fund limitation in Section 57-15-27 applies to the "cash reserve" referenced in Section 11-23-02 for each separate fund budgeted according to the form prescribed by the State Auditor and Tax Commissioner.<sup>4</sup> Following the Attorney General's analysis, the 75 percent interim fund limitation under Section 57-15-27 applies regardless of whether the fund is referred to in the provisions as an "interim fund," a "reserve fund," or "cash reserves."

The Attorney General also made clear in the 1979 opinion that, because the 75 percent limitation is a mathematical procedure that does not require the county auditor to exercise judgment or discretion as to the reasonableness of the levy amount, the 75 percent limitation was considered a "limitation prescribed by statute" as the term is used in Section 57-15-02, and constitutes a "prescribed maximum legal rate of levy" that the county auditor must apply.<sup>5</sup> As such, if the dollar amount budgeted for the interim fund or cash reserve would cause the fund to be in excess of the 75 percent limitation, the county auditor would be required by Section 57-15-02 to apply a mill rate for the fund that would produce an amount for the fund which would prevent it from exceeding the 75 percent limitation. The Attorney General reiterated this conclusion in the 1993 opinion, noting in a circumstance in which, at the end of a budget cycle, the total of cash reserve and unexpended appropriation exceeds the 75 percent limitation, the amount in the fund can be regulated by the county auditor reducing or eliminating the mill levy for the subject fund until the balance is brought into conformity with Section 57-15-27.<sup>6</sup> Based on this analysis, it is the statutory responsibility of the county auditor to apply a mill rate that would produce an amount for the fund which would prevent it from exceeding the 75 percent limitation.

<sup>2</sup> N.D. Op. Atty. Gen. L-96 (1979).

<sup>3</sup> The language currently in Section 57-15-27 is substantially similar to the provision interpreted by the Attorney General in 1979, with the exception of the exemption of school districts from the requirement in the first sentence.

<sup>4</sup> N.D. Op. Atty. Gen. L-135 (1993).

<sup>5</sup> N.D. Op. Atty. Gen. L-96 (1979). See also *Great N. Ry. Co. v. Duncan*, 176 N.W. 992, 995 (N.D. 1919) ("Thus is the county auditor made an officer charged with the duty of "fixing" a levy when the same is excessive").

<sup>6</sup> N.D. Op. Atty. Gen. L-135 (1993).

Consistent with the Attorney General's analysis of the 75 percent limitation for interim funds or cash reserves, the recently enacted taxing district levy limitation under Section 57-15-01.2 likely would be considered a "limitation prescribed by statute" for purposes of the county auditor's determination of the tax rate under Section 57-15-02. Subject to certain exceptions, the taxing district levy limitation under Section 57-15-01.2 generally prohibits a taxing district from increasing property taxes levied in dollars by more than 3 percent each year, plus any unused excess percentage increase from the 5 preceding taxable years, without requiring voter approval. Like the 75 percent fund limitation, the taxing district levy limitation also is a mathematical procedure that does not require the county auditor to exercise judgment or discretion as to the reasonableness of the levy amount. As such, the levy limitation under Section 57-15-01.2 likely is considered a "limitation prescribed by statute" as the term is used in Section 57-15-02 and constitutes a "prescribed maximum legal rate of levy" that the county auditor must apply. Therefore, if at the end of a budget cycle, the taxing district's property tax levy exceeds the 3 percent taxing district levy limitation under Section 57-15-01.2, the county auditor arguably would be required to reduce the mill levy to bring the levy into conformity with the section.

### **Penalty for Extending Taxes in Excess of Statutory Limitation**

In a circumstance in which, similar to the finding in the recent Stark County audit, a county auditor fails to adhere to the statutory responsibility to determine the tax rate as provided in Section 57-15-02, Section 57-15-35 provides a county auditor who extends taxes in excess of the limitations prescribed under Chapter 57-15 is subject to a court-imposed penalty of \$25 to \$1,000 in an action brought by the state's attorney for the benefit of the county General Fund. If the violation is willful, the county auditor also is guilty of a Class A misdemeanor. Enforcement under this section depends on whether a state's attorney elects to pursue a charge under Section 57-15-35, which may present a practical barrier to enforcement of the penalty.

While the provision imposes a penalty on the county auditor as the official responsible for determining the tax rate, this particular provision does not require automatic issuance of refunds or corresponding reductions in future budget cycles. However, other provisions of state law provide a remedy for a taxpayer to address an erroneous computation of property tax, including through the abatement process.

### **Proceedings to Abate or Refund Taxes**

A property owner may contest the tax levied against, or valuation of, the owner's property by applying for an abatement and refund of taxes under Chapter 57-23 if an applicable statutory ground exists. Statutory grounds for granting an abatement include the erroneous computation of tax. Other grounds for abatement include invalid, inequitable, or unjust assessments, assessment of improvements that did not exist on the assessment date, assessment of exempt property, assessment of damaged or destroyed improvements, and assessment of the same parcel more than once.

A property owner may commence the abatement process by filing an application for abatement and refund of taxes. Several layers of review are involved in the abatement process, which may culminate in an appeal of the decision of the board of county commissioners to the district court and then to the North Dakota Supreme Court. If the application for abatement is approved, the assessment is corrected or, if the tax has been paid, a refund is issued to the applicant. The refund must include the abated or compromised tax amount and any penalties and interest previously paid on the abated or compromised portion of the tax. The refunded amount also must be charged to the appropriate taxing districts which may have received any part of the money subject to the refund, in proportion to the levies for the year for which the tax was extended.

### **Committee Oversight**

Legislative enforcement of state law also includes structured oversight of the programs and laws created by the Legislative Assembly, including through interim committee studies and responsibilities. Among many statutory powers and duties, the Legislative Management has the power and duty to collect information concerning the government and general welfare of the state and its political subdivisions, study and consider important issues of public policy and questions of general interest, and prepare

proposed bills and resolutions for consideration during the next legislative session.<sup>7</sup> As part of these powers and duties, the Legislative Management assigns interim study responsibilities to various interim committees, some of which function under statutory authority.<sup>8</sup> Pursuant to study directives, these interim committees receive information, examine issues, and develop recommendations for the Legislative Management, and, if approved, for the succeeding Legislative Assembly.

### **Tax Reform and Relief Advisory Committee**

In some cases, interim committees provide oversight of legislative programs including those administered by political subdivisions. For example, following the enactment of House Bill No. 1176 (2025), the Tax Reform and Relief Advisory Committee was formed and has been tasked with studying property tax reform and relief during the 2025-26 interim. As part of this study, the committee is required to receive and consider information and analysis regarding various programs administered by taxing districts, including the primary residence credit and the 3 percent taxing district levy limitation under Section 57-15-01.2. As part of this program oversight effort, the committee has received information from several interested parties, including representatives of various taxing districts and the Tax Department, and is expected to continue receiving information related to these programs throughout the interim.

### **Legislative Audit and Fiscal Review Committee**

Another example pertinent to the topic of political subdivision and state agency compliance is the Legislative Audit and Fiscal Review Committee. The Legislative Management is required by statute to appoint this committee each interim.<sup>9</sup> The committee is tasked with:

- Studying and reviewing the financial transactions of the state;
- Ensuring the collection of revenues and the expenditure of public funds complies with the law, legislative intent, and sound financial practices; and
- Providing the Legislative Assembly with formal, objective information on revenue collections and expenditures to inform legislative action and improve the state's fiscal structure and transactions.

The committee has several statutorily prescribed duties relating to the oversight of political subdivisions, including:

- Determining when the State Auditor is to perform audits of political subdivisions;
- Receiving audit reports from the State Auditor requested by the committee under Section 54-10-15; and
- Ordering the State Auditor to audit or review the accounts of any political subdivision.<sup>10</sup>

If the committee determines or has reason to believe a violation of law may have occurred relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee is required to present the evidence or information to the Attorney General. The Attorney General is required to further investigate as deemed necessary and, if the evidence indicates a probable violation of law, to initiate prosecution as provided by law.<sup>11</sup> Notably, there is no comparable statutory process for the committee to refer potential violations of law by political subdivision officials or employees to the Attorney General, nor is there a statutory mandate requiring the Attorney General to investigate the matters upon referral. Although state law does not prohibit the committee from encouraging the Attorney General to consider an investigation into a political subdivision's noncompliance with state law, the decision to initiate an investigation or take enforcement action remains within the Attorney General's discretion.

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<sup>7</sup> N.D.C.C. § 54-35-02.

<sup>8</sup> Examples include Administrative Rules, Budget Section, Employee Benefits Programs, Energy Development and Transmission, Higher Education Funding, Information Technology, Legislative Audit and Fiscal Review, Tribal and State Relations, and Water Topics Overview.

<sup>9</sup> N.D.C.C. § 54-35-02.1.

<sup>10</sup> N.D.C.C. §§ 54-10-13, 54-10-15, and 54-35-02.2.

<sup>11</sup> N.D.C.C. § 54-35-02.2.

## STATE AUDITOR

The State Auditor's primary role in enforcing political subdivision compliance is through the political subdivision auditing process outlined in Chapter 54-10. Sections 54-10-13 and 54-10-14 require the State Auditor to perform audits of many types of political subdivisions, including political subdivisions empowered to levy property taxes, once every 2 years. The State Auditor is required to perform a political subdivision audit on a more frequent basis than once every 2 years if requested by the governing board, ordered by the Governor or the Legislative Audit and Fiscal Review Committee, petitioned by the electors under Section 54-10-15, or at the discretion of the State Auditor for alleged improprieties.

Section 54-10-14 requires the State Auditor to charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. In lieu of audit reports every 2 years, this section allows the State Auditor to receive annual reports from political subdivisions with less than \$2 million of annual receipts, excluding any funds passed through the political subdivision to another entity. Section 54-10-14 also allows political subdivisions to choose to be audited by a certified public accountant or licensed public accountant rather than by the State Auditor. The public accountant must register with the State Auditor, comply with generally accepted government auditing standards for audits of political subdivisions, and submit copies of the audit report to the State Auditor's office when the report is delivered to the political subdivision. The State Auditor must review the audit report and may review the public accountant's workpapers to determine if the report and workpapers meet generally accepted government auditing standards. The State Auditor may charge the political subdivision a fee for costs related to reviewing the audit report and workpapers as outlined in the section.

Political subdivision audit reports offer taxpayers objective insight regarding how public resources are managed and whether a political subdivision has complied with state laws. This insight allows taxpayers to assess local government performance and express their views to elected officials, including by direct communication with or by voting for elected political subdivision officials.

## ATTORNEY GENERAL

The Attorney General's enforcement role with respect to political subdivision compliance with state law generally is limited and varies based on the type of compliance issue. For example, although not exclusively applicable to political subdivisions, the Attorney General enforces compliance with the state open records and open meetings laws under Chapter 44-04, which apply to governing bodies of political subdivisions. Additionally, the Attorney General is more directly responsible for enforcing certain state laws as explicitly outlined in the Century Code, including charitable gaming laws under Chapter 53-06.1, certain consumer fraud laws pursuant to Section 54-12-17, and the prohibition of sanctuary city policies under Section 44-08-25. The Attorney General's authority to directly compel a political subdivision to comply with state law appears to be limited to the powers expressly granted by the Legislative Assembly, and the extent of that authority may vary depending on the circumstances.

In a broader context of enforcing political subdivision compliance with state law, the Attorney General has a limited role primarily focused on legal interpretation and guidance in the form of legal opinions. The Attorney General is authorized by state law to issue opinions to certain government officials, including county state's attorneys and certain city officials.<sup>12</sup> These legal opinions may interpret state law as applied to a particular factual scenario in a city or county, or offer guidance on the appropriate course of action to remain in compliance with state law. As such, the Attorney General plays an important role in assisting political subdivision officials to better understand their roles and responsibilities outlined in state law to remain in compliance.

Other potential statutes of interest related to the Attorney General include:

- **Section 54-12-03**, which authorizes the Attorney General to conduct investigations within any county to ensure state laws are being properly enforced when the Attorney General deems it

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<sup>12</sup> N.D.C.C. § 54-12-01.

necessary for law enforcement, when the investigation is requested by a majority of the county commissioners, or when petitioned by 25 taxpaying citizens of the county.

- **Section 54-12-04**, which provides upon the written demand of a district court judge, with or without consent and approval of the state's attorney of the county in which the duties are to be performed, the Attorney General, either personally or through the Attorney General's assistants, is required to make a full and complete investigation of any criminal matter or complaint referred to in the demand.

## **CREATING ADDITIONAL STATUTORY ENFORCEMENT MECHANISMS - POTENTIAL CONSIDERATIONS**

The Legislative Assembly may address political subdivision noncompliance with state law by incorporating additional express enforcement mechanisms in state law. This section provides information policymakers may wish to consider as they contemplate potential statutory enforcement mechanisms to address noncompliance in this regard.

### **Preliminary Consideration - Separation of Powers**

As members consider approaches to political subdivision compliance, it is important to keep in mind the constitutional principle of separation of powers. The legislative, executive, and judicial branches of government are coequal and each branch is supreme in its own sphere.<sup>13</sup>

- **Legislative branch** - Legislative power is vested in the Legislative Assembly, consisting of a Senate and a House of Representatives.<sup>14</sup> The Legislative Assembly has the authority to enact laws and appropriate public funds.
- **Executive branch** - Executive power is vested in the Governor.<sup>15</sup> The Governor is responsible for implementing and enforcing the laws enacted by the Legislative Assembly.
- **Judicial branch** - Judicial power is vested in a unified judicial system consisting of the Supreme Court and the district courts.<sup>16</sup> The judiciary interprets the law and, when necessary, may compel compliance with the law.

Each branch of government has a distinct role in addressing a political subdivision's noncompliance with state law. The Legislative Assembly enacts the laws that political subdivisions must follow and may exercise oversight or amend those laws when issues arise. The executive branch, including the State Auditor's office and the Attorney General's office, is responsible for administering and enforcing the law by reviewing compliance, investigating potential violations, and taking further action if appropriate and authorized by state law. The judicial branch interprets the law and, if necessary, may compel a political subdivision to comply with the law through judicial action. The judicial branch provides an additional avenue of enforcement through allowing parties who believe a political subdivision is not following state law to seek judicial remedies, if appropriate.

### **Potential Legislative Approaches**

If the enforcement mechanisms available under law are determined to be insufficient, policymakers may wish to establish different or more specific compliance provisions to address a political subdivision's noncompliance with state law, such as instances in which a political subdivision's property tax levy is in excess of statutory levy limitations. Potential legislative approaches to establish additional enforcement mechanisms will vary depending on the goals of a sponsoring legislator.

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<sup>13</sup> N.D. Const. art. XI, § 26; *State ex rel. Spaeth v. Meiers*, 403 N.W.2d 392, 394 (1987).

<sup>14</sup> N.D. Const. art. III, § 1 and art. IV, § 1.

<sup>15</sup> N.D. Const. art. V, § 1.

<sup>16</sup> N.D. Const. art. VI, § 1.

Examples of potential enforcement mechanisms related to political subdivision compliance with state law generally may include:

- Requiring additional or more targeted committee or agency oversight or audits of designated political subdivision activities; or
- Conditioning the receipt of certain state funding available to political subdivisions on compliance with specific state laws.

Related more specifically to compliance with property tax levy limitations, examples also may include:

- Creating or modifying the penalty under Section 57-15-35 for a county auditor who extends taxes in excess of the statutory levy limitations;
- Designating mill levy limitation enforcement authority to a specific executive branch agency rather than the county auditor; or
- Provided sufficient guidelines are established, authorizing an executive branch agency, review board, or similar body to review property tax levies or investigate complaints related to noncompliance with levy limitations as an alternative to, or in addition to, the existing abatement process.

In any potential legislative approach, it is important to keep in mind the separation of powers principles discussed above. Any delegation of authority to an entity in the executive branch responsible for administering the law must be guided by sufficiently definite standards that establish a clear policy and rule of action, to ensure the delegation constitutes a valid exercise of nonlegislative authority.<sup>17</sup>

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<sup>17</sup> An unlawful delegation of legislative powers arises when a law attempts to give another entity or individual authority to make policy decisions without adequate guidelines. The Legislative Assembly must declare the policy of the law and definitively fix the legal principles that are to control the action taken. *Ralston Purina Co. v. Hagemeister*, 188 N.W.2d 405 (N.D. 1971); *MDU v. Johanneson*, 153 N.W.2d 414 (N.D. 1967).