Prepared by the North Dakota Legislative Council staff for the Taxation Committee
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STATE BOARD OF EQUALIZATION - ENFORCEMENT OF DECISIONS

This memorandum was requested to review constitutional and statutory authority of the State Board of Equalization and determine whether there are any statutory means to enforce compliance by political subdivision officials with decisions of the State Board of Equalization. The memorandum was also requested to discuss options to provide enhanced enforcement authority for decisions of the State Board of Equalization.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The only reference to the State Board of Equalization in the Constitution of North Dakota is contained in Article X, Section 4, which requires property of railroads and public utilities to be assessed by the State Board of Equalization.

North Dakota Century Code (NDCC) Chapter 57-13 provides for the membership, meetings, and duties of the State Board of Equalization. The powers and duties of the board governing assessment are contained in Section 57-13-04, which provides:

> **General duties and powers of board.** The state board of equalization shall equalize the valuation and assessment of property throughout the state, and has power to equalize the assessment of property in this state between assessment districts of the same county, and between the different counties of the state. It shall:
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> 1. Equalize the assessment of real property by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such percentage rate as will raise the same to its proper value as provided by law, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and every county in the state in which the board may believe the value too high, such percentage as will reduce the same to its proper value as provided by law. City lots must be equalized in the manner provided for equalizing other real property.
> 2. In making such equalization, add to or deduct from the aggregate assessed valuation of lands and city lots such percentage as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several assessment districts in each county and in the several counties of the state, or throughout the state, the percentage rate of addition or deduction must be even and not fractional.
> 3. In equalizing individual assessments:
>   a. If it believes an assessment to be too high, the board may reduce the assessment on any separate piece or parcel of real estate if the taxpayer has appealed such assessment to the board either by appearing personally or by a representative before the board or by mail or other communication to the board in which the taxpayer's reasons for asking for the reduction are made known to the board. The board does not have authority to reduce an assessment until the taxpayer has established to the satisfaction of the board that the taxpayer had first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed.
>   b. If it believes an assessment to be too low, the board may increase the assessment on any separate piece or parcel of real estate. The secretary of the board, by mail sent to the last-known address of the owner to whom the property was assessed, shall notify such person of the amount of increase made by the board in such assessment.
>   c. The percentage of reduction or increase made by the board under this subsection in any assessment must be a whole-numbered amount and not a fractional amount.

It appears the county auditor is required to apply any assessment changes made by the State Board of Equalization under NDCC Section 57-13-08, which provides:

> **Duty of county auditor after equalization by state board.** Upon receipt of the report of the proceedings of the state board of equalization, the county auditor shall add to or deduct from each tract or lot of real property in the auditor's county the required percentage of the valuation thereof, as it stands after the same has been equalized

by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot contains no fraction of a dollar.

It appears that failure of the county auditor to apply directives of the State Board of Equalization as required by NDCC Section 57-13-08 could subject the county auditor to penalties under two sections of law. Under Section 57-45-05, it appears the county auditor is subject to removal from office for refusal to perform a duty imposed under Title 57. That section provides:

> **Officer's refusal to perform duty - Penalty.** Every officer or employee of any political subdivision of this state who in any case knowingly refuses to perform any duty enjoined upon the officer or employee by any provision in this title, or who consents to or connives at any evasion of the provisions of this title whereby any proceeding is prevented or hindered, is guilty of malfeasance in office, and is subject to removal from office. Any person aggrieved by the failure of any officer or employee to perform the officer's or employee's duties as provided in this title may file a complaint under section 12.1-11-06. In addition, the state's attorney or any aggrieved party may proceed to obtain a writ of mandamus to compel performance by such officer or employee. Any failure of an officer or employee to do any act at the particular time specified in this title in no manner invalidates any tax levy, or any foreclosure of tax lien, or tax deed.

It appears a county auditor refusing to comply with the statutory requirement of NDCC Section 57-13-08 would also be subject to criminal prosecution under Section 12.1-11-06, which provides:

> **Public servant refusing to perform duty.** Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

It appears the board of county commissioners may also be subject to criminal prosecution under NDCC Section 12.1-11-06 if the board orders the county auditor not to comply with directives of the State Board of Equalization. However, the threat of criminal prosecution for county officials may be of very limited value because the county state's attorney is likely to be reluctant to prosecute county officials. We are unaware of any such prosecutions of criminal charges against county officials who have refused to comply with directives of the State Board of Equalization.

A consideration that should occur to county officials who refuse to comply with directives of the State Board of Equalization is the potential for a civil action filed by dissatisfied taxpayers. The state's attorney of the county is not required to defend a county officer in a civil action unless the civil action alleges negligence, wrongful acts, or omissions occurring "within the scope of the employee's employment" (NDCC Section 32-12.1-04). Because refusal to comply with a directive of the State Board of Equalization would probably be considered to take the refusal outside "the scope of the employee's employment," it appears likely a county official subject to a civil action in those circumstances would be required to retain legal counsel at personal expense.

ENFORCEMENT OPTIONS

It appears enforcement options are limited. Options for legal action would probably be limited to action initiated by the Attorney General's office on behalf of the State Board of Equalization to either prosecute county officials for refusal to perform a duty imposed by law or to seek a court order requiring county officials to comply with a directive of the State Board of Equalization. An aggrieved taxpayer has the right to seek a writ of mandamus under NDCC Section 57-45-05 to compel county officials to comply with a directive of the State Board of Equalization, but the potential expense of such court action would discourage most taxpayers from that course of action.

Another option to encourage compliance would be imposition of a monetary penalty, similar to the provision in 2007 House Bill No. 1303, requiring counties to fully implement use of soil type and soil classification data from detailed or general soil surveys in agricultural property assessments. The bill imposed a penalty for noncompliance in the form of withholding 5 percent of the county allocation each month from the state aid distribution fund until the county implements use of soil surveys in agricultural property assessments.