

## **TESTIMONY TO THE INTERIM TAXATION COMMITTEE**

Prepared November 5, 2013 by  
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North Dakota Association of Counties

### **REGARDING COUNTY LEVY CONSOLIDATION**

Chairman Cook and members of the Interim Taxation Committee – our Association was asked to provide several specific sets of information for today’s meeting. This particular piece of testimony has been prepared to respond to the following request:

4. The committee requested information on the 2003 legislation that allowed county levy consolidation. Please brief the committee on the reason for the change and how many counties have opted to consolidate levies under NDCC 57-15-06.10. Has the referendum provision of that section been triggered in any county? Is there evidence that counties have achieved efficiency by consolidation or has their tax levy increased more than other counties' levies since consolidation?

We really appreciate this opportunity to discuss the reasoning behind the enactment of NDCC 57-15-06.10, the optional consolidation of county mill levies, as well as its limitations that have kept counties from using this authority.

As some on this Committee may remember, this section of Century Code was first enacted in 2003, and its passage was a priority of the counties. The section, as a whole, was enacted as an optional tool to give local officials better control of their own budgets and to allow for a more honest approach to property taxes.

The concept remains strongly supported by counties, however, several unforeseen flaws in the original bill, coupled with amendments adopted prior to enactment, resulted in a permissive authority that was not workable for counties. County auditors, after several considered using this section and identified the problems, surveyed their association regarding the legislation. Through this survey they identified three areas that would make the authority more useable.

1. Remove from the optional consolidation the levies for the four appointed boards that separately “certify” their levies to the county commission,
2. Change the incorrect references to several levies, and
3. Remove or improve the “growth limitation” on mills levied.

The Auditors presented these in testimony during the following interim and HB1025 was introduced during the 2005 Session to make these necessary changes. This, ultimately, unsuccessful bill is attached to help explain the law and the changes that were proposed 2005.

Before getting into the limitations of the current law, I would first like to list its key elements.

1. The section creates an optional authority – it is an “either/or” option – counties can keep the current mix of levies, or opt for the consolidated general fund levy – not both and no other combinations.
2. The section has no effect on counties that have, or will in the future; consolidate their levies through home rule – currently Cass and Ward Counties.
3. The consolidated general fund allowed by this section, if adopted in a county, would combine 35 special levy authorities with the 7 parts of the county general fund. Levies that are dedicated to very specific projects (Farm-to-Market Roads) or those applied less than countywide (Job Development) were not included in the optional consolidation.
4. The consolidated general fund levy limit was set by statute at 134 mills – somewhat less than the combined total of the current levies.
5. A county commission must implement the consolidated general fund levy through a proscribed process allowing for citizen input and referral.
6. Adoption of the consolidated levy by a county would eliminate county use of the “maximum mill levy” (or hold harmless) process.

A close examination of the levies proposed for consolidation helps explain the logic of the legislation. Counties have 68 separate levy authorities. They vary from the general fund, which is very “general” in nature, to very “special” levies such as the 2 mills for a UHF Television Booster Station. This complex collection is confusing for the taxpayer, and cumbersome for local government to manage.

Some counties simply can’t control leafy spurge with the available 4 mills, but most have no place to go for more money; while some others could spray much of the entire state with 4 mills. Likewise, many counties can no longer fully cost-share with the Extension Service with the 2 plus 2 mills allowed by law, but have few general funds available to supplement, and virtually all other funds are restricted to other purposes. This section of law allows the county board the option to take charge of their budget, and make the decisions they were elected to make.

At the end of my testimony is an attachment (Table A) that lists all county levies, categorizing them by those that would “remain consolidated” if HB1025 had been adopted, those which that bill proposed to remove, and those that were not included in the original legislation.

More difficult to understand, but possibly the most important reason the law was proposed, relates to the annual implementation of the property tax process. State law limits counties to the highest amount of dollars levied in each fund for the past 3 years (if they have reached the statutory mill levy maximum), plus any added valuation. This induces a county, when they use the State’s “maximum mill levy worksheet”, to take advantage of any new growth whether they need additional revenue or not. If they don’t take the growth now, it may not be available when they do need the additional revenue next year or sometime in the future. This bill would allow counties to maintain, or actually even lower taxes, without the risk of being unable to meet their obligations in future years.

This consolidation of levies was designed as a fiscal responsibility proposal. Local elected leaders would have more control and more responsibility for a system that is more understandable to our citizens. County commissioners are elected and charged with governing the fiscal affairs of the county. Unfortunately, with levies that have remained unchanged (in most cases for over 30 years), county boards no longer exercise that much control. That control has shifted to the Legislature when levies are tweaked, and with whatever forces set federal loan rates that dictate the largest share of property valuation in many counties. This section of law was designed to put that authority back on the individuals that State Law says should be responsible.

To address the issues raised by the Auditors, a 2003-04 interim committee proposed in HB10125 to amend out references to the levies supporting the County Weed Board, Weather Modification Board, County Park Board, and Library Board. Since these Boards must certify their own budgets, (rather than operate with a budget prepared by the county commission) it was felt that combining their levies into the general fund would be cumbersome. This was coupled with a reduction to the mill levy maximum for the consolidated general fund from 134 to 118 mills.

I should also mention that two additional (more technical) changes regarding the levies identified in the bill were proposed in HB1025. Section 11-11.1-06 is the alternate Economic Development levy (1219b), which was not intended for inclusion in the original bill, and was therefore struck out. Also, the citation for

section 11-11-65 was amended out in HB1025 and replaced with 57-15-60 as the appropriate reference for the authority for levy Number 1262 (Handicapped Programs & Activities).

The most significant change proposed in HB1025 (and the most critical for its future use) was the removal of the limitation on growth – added as an amendment to the interim proposal during the 2003 Session. In current law, the section would only allow counties to annually increase the combined number of mills they have prior to consolidation by the Consumer Price Index – up to the absolute limit of 118 mills. Had that amendment said “dollars” rather than “mills”, it would not have created the flaw that remains in the law.

If countywide valuation decreases more than the CPI index increases, by calculating this growth factor on mills, the county would see an erosion of their taxing authority in dollars. This is unlike other growth limitations in statute that apply the index to dollars levied, rather than mills – or the “hold harmless” section of law that allows counties to levy the same amount of dollars if total valuation decreases. As you can see from the copy of HB1025, the “hold harmless” (57-15-01.1) is no longer available to counties that opt for this consolidated levy mechanism.

The Interim Committee, prior to the 2005 Session, considered language to change the limitation from mills to dollars, but decided on the removal of the limitation entirely, restoring this part of the law to what was originally proposed. The argument was made that with the CPI index, counties are encouraged to never lower taxes – because they would end up reducing their base for future years. By permitting counties to raise or lower taxes without future penalty, commissions are allowed to budget realistically and reduce the tax burden without impacting future budgets – the bill’s original goal.

**HOUSE BILL NO. 1025**

Introduced by

Legislative Council

(Advisory Commission on Intergovernmental Relations)

1 A BILL for an Act to amend and reenact section 57-15-06.10 of the North Dakota Century Code,  
2 relating to consolidation of county mill levies; and to provide an effective date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 57-15-06.10 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **57-15-06.10. Optional consolidation of county mill levies.**

- 7 1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or  
8 57-15-06, a county may determine its general fund levy authority as provided in  
9 this section. A county may consolidate the levies provided for under sections  
10 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02,  
11 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, ~~44-41-1-06, 44-28-06,~~ 18-07-01,  
12 24-05-01, 32-12.1-08, ~~40-38-02,~~ 40-57.2-04, 49-17.2-21, 52-09-08, 57-15-06.4,  
13 57-15-06.5, 57-15-06.6, ~~57-15-06.9,~~ 57-15-10.1, 57-15-27.2, ~~57-15-54,~~ 57-15-59,  
14 57-15-60, and 57-47-04, 61-04.1-26, and 63-01.1-06 with its general fund levy  
15 under section 57-15-06 to provide for a county general fund levy which may not  
16 exceed one hundred ~~thirty-four~~ eighteen mills on the dollar of taxable valuation of  
17 the county. A county that elects to determine its general fund levy authority under  
18 this section may not impose separate levies under the sections listed in this  
19 subsection ~~and may not increase the number of mills levied in any one year over~~  
20 ~~the number levied in the previous year by more than the increase in the consumer~~  
21 ~~price index for all urban consumers, all items, United States city average, as~~  
22 ~~completed by the United States department of labor, bureau of labor statistics.~~  
23 2. The consolidation of mill levies under subsection 1 may be accomplished by  
24 resolution of the board of county commissioners, subject to the right of referendum

Fifty-ninth  
Legislative Assembly

1 by the county electors. The board of county commissioners may by majority vote  
2 adopt a preliminary resolution providing for the consolidated levy. The board shall  
3 publish the preliminary resolution in the official newspaper of the county, at least  
4 once during two different weeks within the thirty-day period immediately following  
5 the adoption of the preliminary resolution. The board of county commissioners  
6 shall hold at least one public hearing and receive comments regarding the  
7 consolidation of mill levies. The preliminary resolution may be referred to the  
8 qualified electors of the county by a petition protesting the consolidation. The  
9 petition must be signed by ten percent or more of the total number of qualified  
10 electors of the county voting for governor at the most recent gubernatorial election,  
11 and filed with the county auditor before four p.m. on the ninetieth day after the  
12 preliminary resolution is adopted. If the petition contains the signatures of a  
13 sufficient number of qualified electors, the board of county commissioners shall  
14 rescind the preliminary resolution or submit the resolution to a vote of the qualified  
15 electors of the county at the next regular election or at a special election called by  
16 the board of county commissioners to address the question. If a majority of the  
17 qualified electors voting on the question approve the resolution, the consolidation  
18 becomes effective for the next tax year and subsequent tax years. If a petition  
19 protesting the consolidation is not submitted within ninety days, the board of county  
20 commissioners shall consider the comments received regarding the consolidation  
21 and either adopt a final resolution implementing the consolidation or rescind the  
22 preliminary resolution. The consolidation of mill levies may be reversed by  
23 resolution of the board of county commissioners following the same procedure  
24 provided for implementation of the consolidation or by a majority vote of the  
25 qualified electors of the county voting on the question pursuant to submission of a  
26 petition to reverse the consolidation signed by ten percent or more of the total  
27 number of qualified electors of the county voting for governor at the most recent  
28 gubernatorial election.

- 29 3. A contractual obligation entered by a county with respect to a dedicated mill levy  
30 may not be impaired as a result of consolidation of levies under this section.

## Listing of County Levies Addressed in House Bill 1025 (NDCC 57-15-06.10)

Levies in HB1025 Order	NDCC Section	Purpose	Tax Dept. Code	Levy Limit	Remarks
1	4-02-26	County Fair	1218a	1.00	For first year, may continue on board's own motion
2	4-02-27	County Fair	1218b	1.50	For subsequent years upon vote of electors or board
3	4-02-27.1	County Fair	1218c	0.50	Upon majority vote of qualified electors
4	4-02-27.2	County Fair Lease/purchase	1241	2.00	Petition and vote by electors - not to exceed 10 years
5	4-02-37	Multi-County Fair Assoc.	1206	1.00	Commission option - added within general fund
6	4-08-15	Extension Service	1214	2.00	Vote of electors - maximum may be increased
7	4-08-15.1	Extension Service	1215	2.00	Vote of electors
8	4-16-02	Gopher & pest control	1253	0.50	Board action
9	4-33-11	Plant pests	1243	1.00	Approval of 60% of voters for reimbursing Gen. Fund - one year
10	11-11-24	Extra Ordinary Outlay	1205	5.00	Majority vote of electors - within general fund
11	11-11-53	Historical work	1216	0.75	.25 mill or .75 mill upon 60% vote by electors
12	11-11-60	UHF TV booster Station	1246	2.00	60% vote of electors - township voter may exclude themselves
13	11-11-65	Handicapped Programs & Activ.	1262	0.50	Voter imposed & removed ( <del>Wrong cite should be 57-15-60</del> )
14	11-11.1-06	Alternate Contract-Ind. Develop	1219b	4.00	Commission vote as alternate to 1219a ( <b>Added in error</b> )
15	11-28-06	County Park & Rec. Areas	1267	1.00	By Commission but voters may increase
16	18-07-01	Firebreaks	1207	5.00	Upon petition - added within the general fund
17	24-05-01	County Road & Bridge	1233	5.00	60% of the voters
18	32-12.1-08	Insurance Reserve	1235	5.00	Board action
19	40-38-02	Library & Reading Room	1260	4.00	Petition and vote by electors - may be increased by voters
20	40-57.2-04	Econ. Planning Surveys	1242	1.00	60% vote of electors
21	49-17.2-21	Railroad purposes	1247	4.00	Board action
22	52-09-08	OASIS, Retirement, Automat.	1211	30.00	Board action
	Same cite	Comp. Health Ins	1261	4.00	Board action
23	57-15-06.4	Veterans Service Officer	1213	1.25	Board action
24	57-15-06.5	Planning Purposes	1244	3.00	60% vote of electors
25	57-15-06.6	Reg. or Co. Correction Center	1208	5.00	Board action
26	57-15-06.9	Park & Rec. Facilities	1269	3.00	Petition & elector vote - dedicated to bond payment
27	57-15-10.1	Advertising purposes	1224	0.50	Board action
28	57-15-27.2	Abandoned Cemetery	1232	0.10	Board action
29	57-15-54	Weed & Grass Control	1257	2.00	Vote of the electors
30	57-15-59	Lease for court/LE facilities	1263	10.00	2/3 of governing body - for 20 years
31	57-15-60	Handicapped Programs & Activ.	1262	0.50	Voter imposed & removed ( <b>Corrected citation</b> )
32	57-47-04	Co. Loan Fund-Deficiency Levy	1226	3.00	Board action
33	61-04.1-26	Weather Modification	1229	7.00	Board action with budget certified by weather mod board
34	63-01.1-06	Weed & Leafy Spurge	1258	4.00	Board action
	57-15-06	General Fund	1201-3	23.00	Board action
				144.60	Raw Total
				(1.00)	Less County Fair Levy that can't be used if other levy is imposed
				(4.00)	Less levy included in original bill by mistake
				-	Incorrect Citation replaced with correct citation
				139.60	Original (HB1024) total of levies consolidated
				(21.00)	Total for Boards that are "certified" to the commission
				118.60	Adjusted Total

## Listing of County Levies NOT Addressed in House Bill 1025 (NDCC 57-15-06.10)

Purpose	Tax Dept. Code	Levy Limit	Remarks
Excess Levy (50% Legal Limitation)	1209	***	60% Vote - 2-Year Limit
Emergency	1210	Varies	Board - Stops when variable limit is reached
Farm to Market & Federal Aid Road	1212	by ballot	50+% Vote
Health District	1217	5.00	Joint Board
Job Development	1219	4.00	Board - City can limit to rural areas
Human Services	1220	20.00	Board
Programs & Activities for Elderly	1221	2.00	50+% Vote
Emergency Human Services	1222	Unlimited	Board - if Human Service costs exceed revenue
Airport Authority	1225	4.00	Board - City/Twp levy can limit to other areas
Spec. Assmt on County Property	1227	Unlimited	Board
Ambulance Service	1228	10.00	50+% Vote
Regional Airport Authority	1230	4.00	Airport Board
Bond P&I: Co.Bldgs.,Bridges,Rds.	1231	Unlimited	Board
Aid for Junior Colleges	1234	REPEALED	
Judgements	1236a	Unlimited	Board
Judgements by the State	1236b	1.00	Board
County Clinic Association	1237	8.00	66% Vote - 8 mills for 5 years or 5 mills for 15 years
Nursing Home Authority	1238	5.00	Board
County Hospital Association	1239	8.00	66% Vote - 8 mills for 5 years or 5 mills for 15 years
County Fair, Land & Buildings	1240	0.50	50+% Vote
Judgement for Injury Claim	1245	5.00	Board
Default of State Taxes	1248	Unlimited	Board
Fire Protection	1249	Unlimited	Petition of organized townships
Compromise of Judgement/Injury	1250	Unlimited	Board
Bond payments for judgement	1251	Unlimited	Board
Joining Garrison Diversion Dist.	1252	Unlimited	Board
Debts of dissolved townships	1254	Unlimited	Board - Levied against dissolved townships only
Pay township debt to county	1255	Twp.Cap.	Board
Disaster/Emergency matching	1256	EXPIRED	
Unorganized Road & Bridge	1259	18.00	Board - Only in unorganized territory
Water Resource District	1264	4.00	Board
Joint Water Resource District	1265	2.00	Board
Vector Control District	1266	1.00	Board
Joint County Park	1268	3.00	50+% Vote