

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Tuesday, March 16, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dwight Cook, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dwight Cook, John M. Andrist, Jim Dotzenrod, Joe Miller, George Nodland, Tracy Potter, Bob Stenehjem; Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Robert Frantsvog, Glen Froseth, Craig Headland, Jim Kasper, Louis Pinkerton, Arlo Schmidt, Gary R. Sukut, Dave Weiler, Lonny Winrich

Members absent: Senator Constance Triplett; Representatives Scot Kelsh, Dwight Wrangham

Others present: Senator David O'Connell and Representative Shirley Meyer, members of the Legislative Management, were also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Representative Drovdal, seconded by Representative Headland, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

TELECOMMUNICATIONS TAXES AND FEES

Chairman Cook called on Mr. Myles Vosberg, Director, Income, Sales, and Special Taxes Division, Tax Department, for a presentation of information ([Appendix B](#)) requested by the committee relating to telecommunications taxes and fees.

Chairman Cook requested Mr. Vosberg begin his presentation by reviewing the final portion of the prepared testimony relating to telecommunications service additional fees. Mr. Vosberg said he gathered the information from reviewing telecommunications service bills of consumers to identify any additional fees or taxes imposed. He said he identified nine fees and taxes authorized or required by federal law which are collected with telecommunications billings in addition to state sales and use taxes and other state fees. He said the additional federal fees and taxes include:

- Administrative fee - Imposed by a wireless communications company to defray costs of connecting calls to other networks.
- Extended area service fee - Charged by a local telecommunications company in lieu of long-distance charges for providing toll-free service in an expanded service area.
- Federal access fee - Imposed by a local exchange to pay part of the cost of providing access to its network. The Federal

Communications Commission (FCC) sets maximum allowable charges.

- Federal excise tax - Imposed by the federal government at a rate of 3 percent of charges for local service not including toll service.
- Federal communications relay service fee - Collected by the federal government as a percentage of interstate toll calls. Revenues are used to provide service to communications-impaired individuals.
- Federal universal service charge - Imposed by the FCC to help fund provision of services to low-income individuals and areas where the cost of providing service is high. The fee is a percentage of interstate and international call charges.
- Interstate service fee - Charge imposed by a service provider to recover costs of providing access to interstate telecommunications services.
- Local number portability fee - Imposed by a communications provider to recover costs associated with transferring a telephone number to or from another provider.
- Regulatory charge - Imposed by a telecommunications company to recover costs associated with government-mandated services.

In response to a question from Representative Bellew, Mr. Vosberg said these fees and charges are generally listed separately on billing statements, but some may be grouped together.

Representative Froseth asked if any of these fees and charges are passed on to assist with enhanced 911 (E911) funding. Mr. Vosberg said no, all of the fees and charges listed are dedicated to other purposes, and some are retained by the carrier while some are transferred to the federal government.

Senator Cook said he understands that the list of fees and charges relates to federal fees and charges and does not include state taxes and fees. Mr. Vosberg said that is correct and state sales and use taxes, E911 fees, and other state charges and taxes are not included in the information provided.

Chairman Cook called on Ms. Stacey Sprinkle, Vice President for State Tax Policy, Verizon Wireless, for background information on the fees and charges imposed under federal law which were reviewed by Mr. Vosberg.

Ms. Sprinkle said federal law enacted in 1993 and 1996 identified wireless telecommunications as a service not subject to state rate regulation because it was determined to be an interstate service in nature.

Ms. Sprinkle said the administrative fee described by Mr. Vosberg is a charge allowed to be imposed by a wireless communications company to defray costs of completing calls with other networks, costs of tower siting, regulatory costs, and other costs to the provider. She said Verizon imposes an administrative fee of seven cents per customer per month.

Ms. Sprinkle said the extended area service fee, federal access fee, and other fees and charges were accurately described by Mr. Vosberg. She said Verizon analyzes the fees it charges customers on a quarterly basis. She said some federal fees change on a quarterly basis. Senator Cook asked if wireless telecommunications providers are required to do this. Ms. Sprinkle said wireless service providers are not required to make quarterly adjustments, but Verizon does so to eliminate any excess fees from billings. Senator Cook asked if all wireless service providers do this or whether they could retain excess tax and fee collections. Ms. Sprinkle said it is possible for wireless service providers to retain excess collections, but it is probably not likely because of the competitive market in which wireless service providers operate.

Representative Drovdal asked if fees allowed for wireless service providers could be incorporated in service plan charges and not separately identified. Ms. Sprinkle said that would be possible and the federal fees and charges would be easier to build into a service plan charge.

Senator Dotzenrod asked if wireless service providers have to obtain state regulatory approval for any of the charges or fees described in the list provided by Mr. Vosberg. Ms. Sprinkle said state regulatory approval is not required for these charges or fees because wireless service is exempt from state regulatory authority.

Representative Headland asked if the FCC is considering substantial changes to fees and charges for wireless services. Ms. Sprinkle said the FCC national broadband plan is to be released to Congress March 16. Representative Headland asked if Voice over Internet Protocol providers have to include these charges and fees on billings. Ms. Sprinkle said most Voice over Internet Protocol providers would be subject to some of these fees and charges but some would not.

Senator Potter asked for information on the total amount of the federal fees and charges included in billings. Ms. Sprinkle said Verizon has cost-recovery charges, federal fees, and other charges totaling about 99 cents per month. Senator Potter asked if competitors are in about the same range of charges. Ms. Sprinkle said the last time she checked, Verizon had the lowest monthly total of these charges among wireless service providers.

Chairman Cook called on Mr. Vosberg to review the other information in the handout distributed to the

committee. Mr. Vosberg said he was requested to provide information on state taxes imposed on telecommunications services. He said North Dakota imposes state and local sales and use taxes, gross receipts taxes, a telecommunications relay service fee, and a 911 emergency services fee and the City of Fargo imposes a franchise fee.

Mr. Vosberg said North Dakota sales tax is imposed at a rate of 5 percent of service charges on telecommunications services. He said the tax applies to intrastate services and ancillary services. He said the sales taxes administered by the Tax Commissioner and revenues are deposited in the state general fund. He said telecommunications service providers are entitled to compensation for collecting and remitting sales taxes in the same amount allowed for other retailers collecting sales tax. He said the compensation is available to retailers reporting more than \$333,000 in taxable sales and purchases in the previous year, and qualifying retailers are allowed to retain 1.5 percent of taxes collected, up to \$85 per month.

Mr. Vosberg said city and county sales taxes are imposed under home rule authority for telecommunications service providers, and current rates range from .25 percent to 2.5 percent of service charges. He said the local sales taxes are applied to intrastate services and ancillary services and are administered by the Tax Commissioner. He said revenues are remitted to the city or county. He said providers are allowed compensation as authorized by the city or county, which currently ranges from no compensation to 5 percent of tax collections, up to \$166.67 per month.

Mr. Vosberg said North Dakota gross receipts tax applies to telecommunications service providers at a rate of 2.5 percent of adjusted gross receipts for communications and ancillary services. He said in addition to local service and intrastate service, the gross receipts tax applies to interstate calls that originate or terminate in North Dakota and are billed to a North Dakota service address. He said gross receipts taxes are administered by the Tax Commissioner and \$8.4 million of revenue collections are allocated each year to counties and the balance of collections goes to the state general fund. He said there is no provider compensation under the gross receipts tax. The written materials distributed by Mr. Vosberg contain a table showing allocation of telecommunications gross receipts taxes for each county.

In response to a question from Senator Cook regarding sourcing for sales tax purposes, Mr. Vosberg said for a prepaid calling card the tax is sourced where the card is sold.

In response to a question from Representative Bellew, Mr. Vosberg said there is no data available on revenue from sales taxes on telecommunications services for the state. He said it will not be possible to break out sales tax collections on telecommunications services from other taxable sales.

Mr. Vosberg said the telecommunications carrier gross receipts tax allows deductions from gross receipts for amounts paid in state and local sales and use taxes, federal excise taxes, and amounts paid by the carrier to another carrier for directory assistance services.

Senator Cook said the base for the gross receipts tax is broader than for sales taxes. Mr. Vosberg said that is correct because the gross receipts tax base includes interstate calls billed to a North Dakota service address.

Mr. Vosberg said total collections of gross receipts taxes for 2009 were approximately \$10.7 million, which means approximately \$2.3 million was deposited in the state general fund.

Mr. Vosberg said the telecommunications relay service fee is imposed at a rate of five cents per line per month in fiscal year 2010. He said the rate is adjusted annually and administered by the Information Technology Department. He said the revenue is used to provide relay service and equipment to communications-impaired users. He said the service provider is allowed to retain 5 percent of fees collected as compensation for collecting the fees. He said this fee is separate from the federal fee imposed for the same purpose. He said the fee generates about \$250,000 per biennium to the Information Technology Department. Representative Headland asked why the fee changes for different years. Mr. Vosberg said the fee is set to generate adequate funds for equipment costs and relay services.

Mr. Vosberg said the 911 fee is imposed at a rate of \$1 per month but may be increased with voter approval to \$1.50 per month per telephone line. He said two political subdivisions have obtained approval to increase the fee to \$1.50 each month but have not increased the fee. He said providers are allowed to retain up to 5 percent of fees collected to cover costs of collecting the fees. He said the fee is administered by and goes to the governing body of the political subdivision imposing the fee.

Mr. Vosberg said the Fargo franchise fee is a tax of 2 percent for local service and applies only to landlines. He said the Fargo ordinance imposing the fee has been in existence for nearly 50 years. He said the revenue from the fee goes to the City of Fargo general fund, and carriers who collect the fee are allowed to retain compensation of 3 percent of fees collected.

Senator Cook said as he understands the tax structure, a telecommunications provider in Fargo is subject to collection of five different state and local taxes. Mr. Vosberg said that is correct. Senator Cook said the tax base, due dates, and the provider compensation are different for each of the state and local taxes. Mr. Vosberg said that is correct.

Mr. Vosberg said the information he provided to the committee has a table showing taxes and fees on telecommunications services, not including sales and use taxes. He said the table is intended as a compilation of available information on state and local

taxes and fees. He said gross receipts tax collections are increasing. He said 911 fees have increased overall but have decreased for landlines and increased for wireless.

Senator Miller said if the state eliminated 911 fees and paid the cost of the 911 system from other funds, it appears there would be a 5 percent savings to taxpayers and the state because 5 percent of 911 fee collections are retained by providers. Mr. Vosberg said that is correct.

Mr. Vosberg said he was requested to compile information on emergency services communications system revenues, expenditures, and reserves for each county. He said the table in the information he distributed provides this information for 2007 and 2009. He said the column of costs entitled Property Tax Reserves/Other includes mostly property tax revenues.

Representative Kasper asked if the entry listed as Red River Regional Dispatch includes Fargo. Mr. Vosberg said that category includes Fargo and surrounding areas.

Representative Belter said it appears from the table that fund balances are quite large in some counties and asked if Mr. Vosberg knows why. Mr. Vosberg said he does not know why some counties carry a large fund balance. He said Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, may be able to provide information.

Chairman Cook called on Mr. Traynor to address any questions committee members might have regarding 911 emergency services fees.

Representative Kasper asked what the reason is for Fargo to have a city franchise tax on telecommunications. Mr. Traynor said he is not familiar with the details and would be guessing, but telecommunications companies use a significant amount of city right of way. He said the costs of using city right of way may have something to do with imposition of the Fargo franchise tax.

Representative Frantsvog said it appears from the information provided by Mr. Vosberg some counties accumulate substantial reserves of 911 service fees. He asked if the reserves are accumulated in anticipation of substantial expenditures. Mr. Traynor said that is probably the reason for accumulation of reserves. He said a county may save up for a number of years before acquiring infrastructure for 911, and when those expenditures occur, there will be a significant increase in the expenditure column.

Senator Cook said the information provided to the committee indicates a significant level of expenditures from property taxes or other revenues in counties maintaining a public safety answering point as compared to counties served by State Radio. He asked why that is the case. Mr. Traynor said some of the additional revenue to support public safety answering point functions comes from property taxes, but there are significant revenues from other sources. He said for State Radio a significant source of

revenue comes from the general fund because State Radio also handles Highway Patrol dispatch services.

Senator Cook asked if he as a Morton County taxpayer pays taxes for support of the Morton County public safety answering point and State Radio. Mr. Traynor said a Morton County resident pays directly for support of a public safety answering point and indirectly for support of State Radio. He said a significant level of state funding is provided for State Radio and everybody in the state pays part of the cost to support State Radio because State Radio provides an important function for all residents of the state in functions like Highway Patrol dispatch services.

Senator Cook said the committee will have to address the equity of replacement revenues for allocation of funds to State Radio and public safety answering point counties if 911 fees are eliminated. Mr. Traynor said that will be a significant consideration.

Representative Belter asked if there are limitations on reserve fund balances for public safety answering point counties. Mr. Traynor said there are no precise limits, but there are guidelines on what are proper expenditures for public safety answering point functions.

Representative Drovdal asked Mr. Traynor to review the services the North Dakota Association of Counties provides to counties for 911 services. Mr. Traynor said the North Dakota Association of Counties makes payments to telecommunications companies for 911 services on behalf of 56 jurisdictions. He said the counties and some cities agreed that the North Dakota Association of Counties should negotiate the cost of these services on behalf of all participating counties and cities.

Senator Cook asked if the money counties pay to the North Dakota Association of Counties comes from 911 fees. Mr. Traynor said 911 fees collected by counties make up a significant part of the payments counties make to the association.

In response to a question from Senator Cook, Mr. Traynor said it is important to remember that gross receipts taxes collected and allocated to counties do not stay at the county level but are allocated like property taxes, so school districts get the largest share of gross receipts tax allocations.

Chairman Cook called on Ms. Sprinkle for comments on the committee's study of telecommunications taxes and fees. Ms. Sprinkle said the committee has received a good sense of the difficulty of operating as a provider of telecommunications services in North Dakota with regard to all the taxes and fees that must be collected.

Ms. Sprinkle said the rate-regulated model for telecommunications that existed during the landline era worked in that environment, but technology and the tax and regulatory landscape has changed significantly and policies should be reviewed to make sure provisions are sensible and fair in current circumstances. She said states should update statutory provisions to apply taxes and fees to the

service provided and not target taxes to the technology that is used to provide the service.

Chairman Cook said pending federal legislation in the Main Street Fairness Act contains provisions for uniform taxes among states for communications services. Ms. Sprinkle said that is correct and the Act allows states three years after enactment to comply with telecommunications service tax provisions. Senator Cook said he does not think North Dakota would have as much problem as other states in complying with the uniform taxes on communications service provisions. Ms. Sprinkle said she agrees and said working on tax policy at the state level makes sense to Verizon, but there will be a federal component to consider.

Ms. Sprinkle said the North Dakota 911 fee applies to each line provided for telecommunications service. She said Verizon has plans providing five separate lines for a family at a reduced price per line. She said because the same fee is imposed per line, the fee can be regressive in nature when the customer is able to obtain a reduced cost per line. She said it is also significant to remember there are customers not bearing their fair share of the cost of 911 services. She said prepaid calling cards and other technologies are not subject to 911 fees.

Senator Cook asked if Ms. Sprinkle is aware of other states that have a better approach to 911 services funding. Ms. Sprinkle said some states have a fee structure similar to North Dakota and some have a more complex formula. She said budget constraints are a problem in many states in current circumstances. She said she is aware of one state that pays the cost of 911 services from general revenues.

In response to a question from Representative Pinkerton, Ms. Sprinkle said Voice over Internet Protocol users are required to identify a registered location for 911 services so they can be located in an emergency. She said the problem is that if the user does not change the registered location when the user changes physical location, the provider and emergency services may think the user is still at the abandoned location.

Representative Pinkerton asked if providers tax prepaid phones on the basis of their use. Ms. Sprinkle said the provider will not know the use until a call is carried. She said for a provider to tax TracFone or other prepaid cellular phone service, the provider will not know how to charge upfront for those taxes or fees that may be passed back later.

Senator Potter said it would seem that an increase in the gross receipts tax to cover the cost of 911 services would be easier to administer than a per line charge. Ms. Sprinkle said a statewide solution would be easier to administer than a variable 911 fee among counties. She said a percentage of gross revenue is fairer to users than a set fee per line, but administration is about the same under either approach.

Representative Drovdal said in McKenzie County a large number of 911 calls received do not come from local residents. He said he does not believe the current fee structure is appropriate in those circumstances. He said the county bears the cost of emergency services but does not receive the equivalent share of fee revenues.

Representative Froseth said it should be determined if the state would have to provide funds to the North Dakota Association of Counties for the association's costs of administration of the 911 system. He asked what the costs would be if State Radio ran the entire system. Mr. Traynor said if State Radio ran the entire E911 system, costs would go up. He said it would still be necessary to have the same number of people to answer calls. He said 600 police and fire services in the state are not on the same frequencies so changes would be needed and would be difficult.

Senator Potter said the gross receipts tax is generating funds to the state general fund, and those revenues should go back to counties in some form. He said using those funds for the E911 system may be an appropriate use.

Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, said it is important to remember that gross receipts taxes are allocated to political subdivisions other than counties. She said at the time the gross receipts tax was restructured, investor-owned exchanges were paying property taxes. She said rural telecommunications companies were paying taxes that were allocated entirely to school districts, and the current formula is based on replacement of tax allocations based on the 1996 distribution of the two preexisting taxes. She provided a copy to Chairman Cook later in the meeting of a printout showing the allocation of telecommunications gross receipts taxes among all political subdivisions in the state. She said the printout provides information showing the allocation of the \$8.4 million gross receipts taxes, which is set as the maximum allocation by statute and the amounts shown in the printout will be the same every year. A copy of the printout is on file in the Legislative Council office.

Representative Drovdal said consideration should be given to increasing the \$8.4 million cap on gross receipts tax allocations among political subdivisions.

Chairman Cook said it appears there is a significant degree of support among committee members for elimination of the current 911 fees and replacement of revenues to counties from state sources. He asked for suggestions on how the state would generate the money for these allocations. Senator Miller said it appears the most direct approach would be to increase the rate of the telecommunications gross receipts tax to generate enough additional revenue to fund E911 services. Chairman Cook asked if any committee members object to that approach. No objections were noted. Chairman Cook requested committee counsel to prepare a bill draft to increase the gross receipts tax

rate to fund E911 allocations and eliminate the 911 fees under current law.

Representative Headland said gross receipts tax funding would be appropriate with assurance that every telecommunications user is paying gross receipts taxes. He said he questions whether Voice over Internet Protocol, prepaid calling cards, and technology such as Magic Jack are subject to gross receipts taxes. Chairman Cook asked Ms. Sprinkle if the gross receipts tax would apply to such users. Ms. Sprinkle said the gross receipts tax would not apply to technology such as Magic Jack and Voice over Internet Protocol.

Chairman Cook asked Mr. Vosberg if the Tax Department can provide information on equalizing the base for gross receipts taxes and sales taxes on telecommunications sales and services and what the fiscal effect of equalizing the tax base would be. Mr. Vosberg said the Tax Department can examine the situation, and he thinks information can be provided to identify potential changes to the tax base and the potential fiscal effect.

Representative Headland said it appears the gross receipts tax as a funding source for E911 services may have some inequities because it was not designed to apply to all technologies.

Representative Kasper said the problem he sees with using the gross receipts tax is that it would not be equitable that he would pay more taxes for E911 services than another user just because he pays more for elective services. He said he would be paying more tax for services, but he and another user paying less tax would have the same access to E911 services.

Chairman Cook said a recent article in the publication *Budget and Tax News* describes a situation in North Carolina about the possibility of taxing online travel agencies. He said online travel agencies charge for hotel rooms and assess sales taxes on the amount they charge. He said the travel agency pays the hotel a price that is less than the travel agency charges the customer and remits sales taxes on the basis of the amount paid to the hotel. He said online travel agencies end up retaining sales tax collections on customer prices that exceed hotel payments. He said this is an issue that will become significant in many states.

PROPERTY TAX RELIEF AND REFORM STUDY

Chairman Cook called on committee counsel to review a bill draft [\[10028.0100\]](#) to extend the property relief provisions of 2009 Senate Bill No. 2199. Committee counsel said the bill draft is not truly a bill draft because it does not make any changes in existing law. He said the bill draft was put together to place before the committee the provisions affected by Senate Bill No. 2199 which will have to be considered by the committee if the tax relief approach is to be extended for the 2011-13 biennium.

Committee counsel said the first section of the bill draft contains the section of law limiting the general fund levy for school districts. He said previous law allowed school districts to levy up to 18 percent more in dollars than the previous year, up to a general fund levy of 185 mills. He said 2009 House Bill No. 1400 reduced the annual increase in dollars from 18 percent to 12 percent. He said Senate Bill No. 2199 took out unlimited levy authority for school districts and added provisions to terminate unlimited levies or levies up to a specific number of mills approved by voters before July 1, 2009. He said these excess levies are terminated effective for taxable years after 2015. He said the 2009 legislation leaves questions as to what the levy limitation will be for a school district with unlimited levy authority or authority to levy a specific number of mills exceeding 185 mills, if that school district fails to obtain approval for a levy of a specific number of excess mills for general fund purposes. He said a memorandum was prepared to identify questions that must be addressed regarding levy limits if voters disapprove excess levy authority.

Committee counsel reviewed a memorandum entitled [Options and Issues Relating to Voter-Approved School District Levies Exceeding Statutory Limits](#). He said there are 14 school districts in the state with authority to levy more than 185 mills for general fund purposes in 2009. He said unlimited levy authority currently in effect will expire at the end of 2015, and the school district must obtain voter approval to continue to levy a specific number of mills in excess of 185 mills. He said if the voters do not approve a specific number of mills for a school district currently having unlimited levy authority, the school district should be able to use North Dakota Century Code Section 57-15-01.1. He said during discussion of Senate Bill No. 2199, it was clear that the legislative intent was that such school districts should be able to continue to levy an equal number of dollars and should not be forced back to the statutory 185-mill limitation. He said some clarification is probably needed in the statutory provisions to ensure this result. He said for school districts that have approval to levy a specific number of excess mills, the question exists what levy limitation will apply when that authority expires by statute or expiration of time. He said under Section 57-15-01.1, which allows a levy based on the number of dollars levied in the previous year, there is a provision requiring a subtraction from future levy authority of the amount of any "temporary" levy increases authorized by voters. He said the question that must be addressed is whether expired excess levy authority is considered a temporary levy increase. He said another issue that must be examined is if the general fund excess levy authority is not approved by voters, can the school district shift to use of tuition and transportation levies, which have no statutory limits.

Committee counsel reviewed the remainder of the bill draft. He said Section 57-64-01 contains the

definition of the phrase "weighted student unit," which is not used within Chapter 57-64 and can be eliminated. He said consideration should be given to the provision of Section 57-64-02 that bases grants to school districts on the combined education mill rate of the school district for taxable year 2008. He said it is not clear what that limitation will do to grants over a number of years.

Committee counsel said Section 57-64-02 contains language intended to save school districts from reductions in allocations of other funds allocated on the basis of property tax levies. He said there are several kinds of allocations to school districts that will affect, or be affected by, property tax relief allocations.

Committee counsel said there are provisions in Section 57-64-03 that must be examined in light of school district levy compliance to qualify for property tax relief grants. He said one provision limits a school district to a levy not exceeding the amount allowed under Section 57-15-01.1 for taxable year 2008, reduced by the amount of the mill levy reduction grant. He said the section also provides that if a ballot measure to levy a specific number of mills is not approved by the voters, the school district levy limitation is subject to the limitations under either Section 57-15-01.1, relating to levy based on the number of dollars levied in the highest of the previous three years, or Section 57-15-14, which is the 185-mill levy limitation.

Committee counsel said the bill draft contains a provision for an appropriation from the general fund for mill levy reduction grants, and the amount is blank because it may have to be adjusted for the 2011-13 biennium. He said the bill draft contains a provision to transfer \$295 million from the property tax relief sustainability fund to the general fund. He said this amount was set aside in the property tax relief sustainability fund by Senate Bill No. 2199 to provide for funding for the 2011-13 biennium. He said the bill draft contains a section providing for a transfer from the permanent oil tax trust fund to the general fund, and the amount is blank because it may be determined that an additional amount will be needed to supplement the \$295 million that was set aside to fund mill levy reduction grants for the 2011-13 biennium. He said the bill draft contains a section providing for a transfer from the permanent oil tax trust fund to the property tax relief sustainability fund, and the amount is left blank, to be filled if the Legislative Assembly decides again to transfer funds to the property tax relief sustainability fund in anticipation of the funding needed for the 2013-15 biennium.

Representative Kasper requested that information be provided to the committee on each of the 14 school districts levying more than 185 mills, including information on the statutory authority for the excess levy and the time when excess levy authority for each of the school districts will expire.

Senator Cook asked for information on the amounts to be included in each of the blank amounts

for the appropriation or transfer in the bill draft. Ms. Dickerson said she is not certain if she can provide all of the information. Committee counsel said he would work with Ms. Dickerson and Mr. Jerry Coleman, Director, School of Finance, Department of Public Instruction, to develop estimated amounts for the appropriations and transfers to maintain the same level of property tax relief.

Representative Headland asked if it is necessary to make a transfer to the property tax relief sustainability fund for the 2013-15 biennium. Committee counsel said it is not necessary to make the transfer, but the provision was included because Senate Bill No. 2199 contained a provision to provide for such a transfer to demonstrate that the property tax relief allocations were sustainable beyond the initial biennium.

PROPERTY TAX DATA

Chairman Cook called on Ms. Dickerson for a presentation of property tax statistical information ([Appendix C](#)) requested by the committee.

Ms. Dickerson said the property tax relief provided by 2009 Senate Bill No. 2199 provided a reduction in school district property tax levies of 28.3 percent. She said on a statewide basis, city tax levies increased by 4.3 percent and county tax levies increased by 8 percent from 2008 to 2009. She said an attachment to her testimony provides information on the change in property taxes levied from 2008 to 2009 for each county in the state showing the total for the county of city taxes, school taxes, and county taxes, plus the total property taxes levy. She said there has been discussion of whether cities and counties would use the opportunity of school district tax reductions to increase city and county levies. She said it does not appear this has happened.

Representative Bellew said he would dispute the conclusion that cities and counties did not take advantage of the opportunity to increase taxes because in Ward County the county property tax levy in dollars was increased by more than 20 percent from 2008 to 2009. Ms. Dickerson said there are instances of substantial levy increases by cities or counties but, on a statewide basis, it does not appear that the average increases for cities and counties were significantly in excess of the average increases from the preceding years.

Ms. Dickerson reviewed information on assessment changes for 2009. She said an attachment to her testimony shows changes in taxable value of agricultural land, residential property, and commercial property for each county from 2008 to 2009. She said on a statewide basis, agricultural values increased 4.19 percent, residential values increased 6.33 percent, and commercial property values increased 6.02 percent. She said the increases for residential and commercial property valuation include the value of new property as well as valuation changes for existing property.

Ms. Dickerson said another attachment to her testimony traces statewide changes in valuation for agricultural, residential, and commercial property.

Ms. Dickerson said she was requested to provide information on changes in effective tax rates from 2008 to 2009. She said on a statewide basis, the 2009 effective tax rate was 0.48 percent for agricultural land, 1.47 percent for residential property, and 1.75 percent for commercial property. She said effective tax rates are determined for each class of property by dividing taxes levied by the market value of property as indicated by the sales ratio study. She said the statistics indicate a significant decline in effective tax rates from 2008 to 2009, attributable primarily to property tax relief provided by 2009 Senate Bill No. 2199.

Ms. Dickerson said it will never be possible to achieve an effective tax rate of 1.5 percent or less on every residential parcel. She said it is not possible to assess every residential parcel at 100 percent of market value, and property tax rates are variable among taxing districts.

Ms. Dickerson said Mr. Coleman reported to the Taxation Committee there will be about \$1 million unexpended for the 2009-11 biennium from the \$295 million appropriation for property tax relief under 2009 Senate Bill No. 2199. She said that estimate does not include consideration of additional payments to school districts approved to make up for unintended exclusion of several property types from calculation of mill levy reduction grants. She said the reason for additional payments is explained in an attachment to her testimony. She said the cost of the additional payments to school districts for the 2009-11 biennium is approximately \$5,233,000. She said that leaves a net shortfall in the appropriation of about \$4,233,000. She said she anticipates a request for a deficiency appropriation to cover that amount.

Ms. Dickerson said taxable value in school districts is used to calculate mill levy reduction grants. She said use of taxable value does not encompass all types of property having taxable value and subject to school property taxes. She said adjustments are needed for homestead credits reimbursed by the state, property subject to payments in lieu of taxes, carbon dioxide pipeline property, and mobile homes.

Ms. Dickerson said statutory adjustments will be required to prevent a loss of funding to school districts and not cause an offsetting loss to other political subdivisions. The attachment to her memorandum describes her suggested solution to this difficulty.

Ms. Dickerson said she was requested to provide an estimate of the necessary appropriation to maintain property tax relief at the level established in 2009 Senate Bill No. 2199. She said an attachment to her testimony details the calculation made to incorporate the additional payments to address tax types other than property taxes and to include projected growth in valuation and resulting property tax revenue increases. She said the estimated amount for school

district mill levy reduction grants for the 2011-13 biennium is \$341,791,000.

Senator Cook asked if it is necessary to adjust legislation to fix the issues relating to property unintentionally excluded from taxable valuation considerations. Ms. Dickerson said she would recommend that adjustment.

FORT BERTHOLD RESERVATION OIL DEVELOPMENT

Chairman Cook called on committee counsel for a presentation of a memorandum entitled [Fort Berthold Reservation Oil Development Under 2007 Senate Bill No. 2419 and Subsequent State-Tribal Agreements](#). Committee counsel said Senate Bill No. 2419 was enacted to remove barriers preventing oil and gas development on the Fort Berthold Reservation. He said the legislation can be termed a success and from the effective date of the agreement on July 1, 2008, to the beginning of February 2010, 160 new wells were completed within the Fort Berthold Reservation, including 40 new wells on trust lands. He said the attachment to the memorandum provides statistical information on the oil and gas tax collections from wells within the Fort Berthold Reservation and distributions of tax revenues to the Three Affiliated Tribes of the Fort Berthold Reservation and the state.

Committee counsel said an amendment at the conclusion of the 2007 Legislative Assembly was believed by some conference committee members to contain a "hold harmless" provision for allocations to political subdivisions. Under a "hold harmless" approach, allocations to political subdivisions would have been based on the entire tax imposed on wells within the reservation, but the amount payable to political subdivisions would have come entirely from the state's share of tax revenues. However, language included in the adopted amendment states only that the state's share of revenue is subject to distribution to political subdivisions.

Committee counsel said information was also requested on limitations under the 2007 legislation on tribal taxes or fees. He said the legislation contained a provision that the tribes must agree not to impose a tribal tax or any fee on future production of oil and gas on the Fort Berthold Reservation. He said the 2008 agreement between the tribes and the Governor and

the 2010 renewal agreement allow the tribes to impose one-time fees totaling \$100,000 per well relating to siting of the well and use of the land. He said the Governor interprets these fees as not being based on oil production and, therefore, not a tax or fee on "future production." He said the fee imposed by the tribes applies to wells in a spacing unit with a trust ownership interest of greater than 50 percent, and there are 62 wells that have been permitted by the state in that category. He said at \$100,000 in fees for each qualifying well, total fee receipts to the tribes would be approximately \$6.2 million.

Representative Meyer requested the committee obtain information on Mountrail and Dunn Counties, and perhaps McKenzie County, to illustrate the revenue difference in oil and gas tax collections from reservation wells in those counties between current law and the allocations that would have been made if the "hold harmless" provision had been incorporated in current law and the agreements.

Representative Froseth said there is a question on how to resolve the issue of the intended "hold harmless" provision for political subdivisions. Committee counsel said the agreements between the Governor and the tribes make no reference to allocation of revenue to political subdivisions. He said he believes a statutory change could be made to provide allocations to affected counties on a "hold harmless" basis without requiring any changes to the existing agreement between the Governor and the Three Affiliated Tribes.

Chairman Cook requested committee counsel to prepare a bill draft for committee consideration that would provide for a hold harmless allocation of tax revenues among political subdivisions for production within the Fort Berthold Reservation.

Chairman Cook said he anticipates the next meeting of the committee to be on May 6, 2010.

No further business appearing, Chairman Cook adjourned the meeting at 2:30 p.m.

John Walstad
Code Revisor

ATTACH:3