

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TAXATION COMMITTEE

Wednesday, January 29, 2020
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Jim Grueneich, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Jim Grueneich, Jason Dockter, Sebastian Ertelt, Ron Guggisberg, Patrick Hatlestad, Craig Headland, Alisa Mitskog, Vicky Steiner; Senators Dwight Cook, Jim Dotzenrod, Jordan Kannianen, Curt Kreun, Dale Patten, Jessica Unruh

Members absent: Representatives Matt Eidson, Tom Kading, Ben Koppelman

Others present: Representative Karen M. Rohr, Mandan, member of the Legislative Management
See [Appendix A](#) for additional persons present.

It was moved by Representative Headland, seconded by Representative Steiner, and carried on a voice vote that the minutes of the September 24, 2019, meeting be approved as distributed.

PROPERTY TAX REPORT

Chairman Grueneich called on Ms. Linda Lies, State Supervisor of Assessments and Director, Property Tax Division, Tax Department, for a demonstration of the department's online [Tax Levy Reporting Lookup Tool](#). Ms. Lies said each county auditor is required to report levy information to the Tax Department by December 31 of each year. She said all 53 counties have reported. She said the levy lookup tool contains data from 2015 through 2019.

In response to a question from Senator Cook, Ms. Lies said the tool can be used to compare tax changes from year to year. She said the department prepared a document ([Appendix B](#)) that shows the increase or decrease in the amount of tax levied from 2018 to 2019 by counties, cities, and school districts. She said the document excludes tax levied on new property. She said an additional statewide report of property tax increases will be prepared by the department and reported to the committee by the statutorily mandated deadline of April 1, 2020. She said additional property tax information also is published in the department's *Property Tax Statistical Report*.

Senator Cook said it is important the public is made aware of where property tax increases are occurring, and the committee provide an opportunity for taxing districts to explain the reasons behind any increases.

In response to a question from Representative Steiner, Ms. Lies said a password is not required to access the levy lookup tool. She said the department's tax levy increase and decrease document ([Appendix B](#)) can be sorted in a variety of ways. She said the Legislative Council staff could forward the document to committee members in an Excel format to allow committee members to sort and manipulate the data.

Ms. Lies distributed information ([Appendix C](#)) showing increases or decreases to statewide taxable valuation and the tax levied from 2016 to 2019 for various classes of property, and information ([Appendix D](#)) listing the state human service fund formula payments distributed to each county in 2019. She said the human service fund formula payments replace county revenue previously generated by the repealed human service levy.

SPECIAL ASSESSMENT REVENUE REPLACEMENT STUDY

Chairman Grueneich called on the Legislative Council staff for presentation of a memorandum entitled [Elected or Appointed Status of Officials Levying Special Assessments](#).

In response to a question from Representative Headland, the Legislative Council staff said action taken by a city special assessment commission is subject to confirmation by the governing body of the city.

In response to a question from Senator Cook, the Legislative Council staff said recreation service districts were granted authority to levy special assessments in 1975. She said she could followup with additional information regarding the number and locations of recreation service districts in the state.

The Legislative Council staff reviewed [Engrossed House Bill No. 1474 \(2019\)](#), which contains the language of the bill before it was amended into a study. She said the engrossed version of the bill would have allowed home rule counties and cities to elect to levy an infrastructure tax in lieu of imposing general special assessments. She said a county or city that elects to levy an infrastructure tax in lieu of general special assessments may levy greenfield special assessments. She said the engrossed bill defined general special assessments as assessments for maintaining existing roads and infrastructure and assessments for the construction or repair of arterial roads that benefit the entire community. She said the engrossed bill defined greenfield special assessments as assessments for infrastructure costs associated with developing agricultural or other undeveloped property. She said House Bill No. 1474, as introduced, was a response to Senate Bill No. 2326 (2017), which prohibited home rule counties and cities from levying any fee or tax not included in the statutory list of county or city home rule powers unless the home rule county or city was levying the tax or fee on or before August 1, 2017. The committee requested Engrossed House Bill No. 1474 be reviewed for discussion purposes and to solicit comments from city representatives on the language in the engrossed bill.

Chairman Grueneich called on Mr. Keith Hunke, City Administrator, City of Bismarck, for a presentation ([Appendix E](#)) regarding the use of special assessments, potential revenue replacement options, and suggested changes to Engrossed House Bill No. 1474. Mr. Hunke said Bismarck uses a portion of its sales tax revenue to subsidize street construction and repair work. He said in 2020, the city intends to dedicate \$6 million in city sales tax revenue to subsidize street maintenance costs. He said changes recommended to Engrossed House Bill No. 1474 include clarifying that a county-imposed infrastructure tax would be placed on a county-issued utility bill and a city-imposed infrastructure tax would be placed on a city-issued utility bill.

In response to a question from Representative Headland, Mr. Hunke said Bismarck issues a city utility bill that includes charges for water, sewer, and garbage collection.

In response to a question from Senator Cook, Mr. Hunke said residential property is required to contract for city garbage collection services, pursuant to ordinance, but commercial property may contract for private garbage collection. He said all properties connected to water and sewer are charged for water and sewer services on a city utility bill. He said streetlight maintenance fees also are listed on the city utility bill. He said utility bills are sent to the owner of the property, regardless of whether the property is leased or occupied by a tenant.

In response to a question from Senator Kreun, Mr. Hunke said a developer of greenfield property possibly could pay a utility tax and greenfield special assessments under the provisions of Engrossed House Bill No. 1474. He said any greenfield special assessments outstanding on a property at the time of sale would be inherited by the individual purchasing the property.

In response to a question from Representative Headland, Mr. Hunke said the estimated cost of the proposed infrastructure tax is \$25 to \$30 per month per property.

In response to a question from Representative Ertelt, Mr. Hunke said the estimated monthly cost only includes maintenance and repair costs for existing infrastructure. He said the estimated cost does not include costs associated with new development.

In response to a question from Senator Unruh, Mr. Hunke said the funding allocated to Bismarck from House Bill No. 1066 (2019), often referred to as the prairie dog bill, is \$16 million for the biennium.

In response to a question from Representative Steiner, Mr. Hunke said at the direction of the city commission, Bismarck has not budgeted its \$16 million appropriation.

In response to a question from Chairman Grueneich, Mr. Hunke said potential uses of the funds which have been discussed included using the funds to reduce new special assessments for retail development and to subsidize existing special assessments.

In response to a question from Senator Kreun, Mr. Hunke said the \$25 to \$30 monthly charge does not take into account the payoff of any pre-existing special assessment debt.

Chairman Grueneich called on Mr. Allen Grasser, City Engineer, and Ms. Maureen Storstad, Finance Director, City of Grand Forks, for a presentation ([Appendix F](#)) regarding the use of special assessments, potential revenue replacement options, and suggested changes to Engrossed House Bill No. 1474. Mr. Grasser said Grand Forks is not in favor of discontinuing the use of special assessments levied to pay costs associated with new development. He said he can see potential in using alternative revenue sources to transition from levying special assessments to cover the costs associated with infrastructure maintenance.

In response to a question from Representative Mitskog, Mr. Grasser said alternative revenue sources being used to offset special assessment costs are revenue from the highway user tax and city sales tax. He said the special assessment commission has flexibility in determining which properties are benefited. He said preliminary special assessment estimates are sent to property owners when a special assessment district is created. He said property owners can attend a public hearing and voice concerns regarding preliminary assessments.

Representative Mitskog said she would like to see more objective parameters applied to the actions that can and cannot be taken by a special assessment commission. She said she also would be interested in whether the North Dakota League of Cities has information regarding other creative ideas cities have used to offset special assessments.

Senator Kreun said in Grand Forks total project costs used to be paid 80 percent by property owners, through the use of special assessments, and 20 percent by the city. He said the cost-sharing structure later shifted to a 50/50 split before transitioning to the current split of 80 percent of costs being paid by the city and the remainder being paid by property owners. He said the cost-sharing transition took over 20 years. He said communication is an important part of the special assessment process. He said property owners generally are more agreeable to their portion of the 20 percent cost of the project once they are informed of the total cost of the project and the city's portion of the total cost.

Senator Cook said the key to special assessments is a fair distribution of benefits. He said property tax is based on the value of property and equalized. He said special assessments are not based on the value of property. He said special assessments are based on the value of the benefit received by the property as the result of an improvement. He said an infrastructure tax would replace a system in which only benefited properties are paying for improvements to one in which all properties would be paying for improvements, even if some properties never benefit from the improvement. He said he does not see much difference between an infrastructure tax and simply increasing property tax. He said many seniors on fixed incomes reside in the district he represents. He said he has concerns regarding the impact an infrastructure tax might have on these individuals.

In response to a question from Senator Cook, Ms. Storstad said there is equality over time in the way improvement districts are established. She said Grand Forks views an infrastructure tax as an additional revenue source that could help offset special assessments imposed for infrastructure maintenance costs.

Chairman Grueneich called on Mr. Bruce Grubb, City Administrator; Ms. Brenda Derrig, City Engineer; Mr. Tom Knakmuhs, Assistant City Engineer; and Mr. Kent Costin, Director of Finance, City of Fargo, for a presentation ([Appendix G](#)) regarding the use of special assessments, potential revenue replacement options, and suggested changes to Engrossed House Bill No. 1474. Mr. Grubb said Fargo appointed a 12-member special assessment task force in August 2018. He said the task force forwarded 26 recommendations to the city commission, 22 of which were incorporated in the city's new infrastructure funding policy. He said the new infrastructure funding policy was adopted by the city commission on November 18, 2019.

In response to a question from Senator Cook, Ms. Derrig said the new policy caps the amount that can be assessed to a property owner. She said a property owner's assessment for sanitary sewer replacement is capped at \$40 per front foot. She said any costs exceeding the capped amount are absorbed by the city. She said the capped amount is listed in the city's infrastructure funding policy and is applied uniformly throughout the city. She said the city will use the funds provided by House Bill No. 1066 to reduce special assessment paving costs by 50 percent for single family residences and smaller multifamily properties and 25 percent for commercial and downtown mixed-use properties. She said the funds also will be used to eliminate special assessments for arterial reconstruction costs for single family residences and other small multifamily properties that do not front an arterial roadway directly.

In response to a question from Representative Headland, Mr. Knakmuhs said the infrastructure funding policy can stand on its own if funding similar to the funding provided in House Bill No. 1066 does not continue. He said the policy specifies the capped amounts listed in the policy only are reduced when additional funding is available.

Mr. Grubb said Fargo is opposed to completely replacing special assessments with an infrastructure fee. He said special assessments are a necessary tool for the preservation and improvement of the city's infrastructure. He said an infrastructure fee could be used to reduce special assessments. He said every city has different needs.

In response to a question from Representative Ertelt, Ms. Derrig said Fargo has a three-member special assessment commission. She said every project begins with a proposed district that is reviewed by the special assessment commission. She said the city's infrastructure funding policy is required by statute and outlines how to assign improvement costs to properties.

Mr. Grubb said the special assessment commission determines which properties benefit from an improvement, and the infrastructure funding policy defines how much the property should be assessed for the value of that benefit. He said the policy is used to create consistency and uniformity in assigning the costs and benefits of improvements.

In response to a question from Senator Cook, Ms. Derrig said a developer has the option to hire a contractor to complete a project and incorporate the project costs into the cost of a lot. She said costs are special assessed to the lot once the city assumes maintenance of the area. She said time considerations, rather than costs, seem to be the deciding factor regarding whether a developer chooses to pay development costs up front.

In response to a question from Representative Hatlestad, Mr. Costin said a developer is required to provide a cash deposit or letter of credit for 50 percent of the project costs during the construction period to insulate the city from a potential default. He said a default related to an assessment district has not occurred since the early 1980s.

In response to a question from Representative Headland, Mr. Costin said one of the recommendations made by the special assessment task force was to enhance the special assessment notice sent to taxpayers. He said previously, the notice only listed the taxpayer's share of the project costs. He said the task force recommended the notice provide the total cost of the project, the city's share of the costs, and the taxpayer's share of the costs. He said the new notice also will identify all sources of funds used for the project, including the amount of funds derived from House Bill No. 1066. He said the new notice will be similar in format to property tax notices. He said it is important for taxpayers to receive a clear picture of how project costs are being funded.

Chairman Grueneich called on Mr. Tom Barry, City Manager, City of Minot, for a presentation ([Appendix H](#)) regarding the use of special assessments, potential revenue replacement options, and suggested changes to Engrossed House Bill No. 1474. Mr. Barry said special assessments are used infrequently in Minot. He said only 10 percent of properties in the city have outstanding special assessments, with an average annual payment of under \$600. He said he would not be in favor of eliminating special assessments entirely. He said overuse of special assessments can spur public consternation. He said other revenue a city can use in place of special assessment revenue includes revenue from property tax, sales tax, utility tax, special district fees or surcharges, impact or development fees, and grants.

In response to a question from Chairman Grueneich, Mr. Barry said special assessments in Minot are low because the city requires developers to pay the costs associated with new developments and property owners only are liable for 50 percent of the costs associated with maintenance projects. He said the city funds the remainder of maintenance project costs with city revenue.

In response to a question from Senator Cook, Mr. Barry said a project developer recovers its costs at the time the developer sells the property.

In response to a question from Representative Steiner, Mr. Barry said Minot has incorporated the funds it received from House Bill No. 1066 into the city's 5-year capital improvement plan for infrastructure funding. He said the 5-year, \$420 million plan ranks and rates various projects and identifies the funding source for projects.

Chairman Grueneich called on Mr. David Tuan, City Administrator, City of Williston, for a presentation ([Appendix I](#)) regarding the use of special assessments, potential revenue replacement options, and suggested changes to Engrossed House Bill No. 1474. Mr. Tuan said Williston has experienced significant growth in recent years, which has resulted in a high debt burden. He said the city's outstanding special assessment debt is just under \$50 million, which averages to about \$1,400 per person. He said property owners in Williston generally pay one-third of the costs of an improvement through special assessments and the city pays the remainder of the costs. He said a special assessment commission reviews the configuration of special assessment districts. He said having a small number of property owners residing in an improvement district is one of the problems the city has encountered when using special assessments. He said a community might struggle in implementing an infrastructure tax if the tax does not address the payment of existing special assessment debt. He said state and federal funds can be used as an alternative to special assessment funds. He said cities also can encourage developers to pay the upfront costs for new developments. He said Williston imposes a 1 percent sales tax. He said sales tax revenue is dedicated to replacing aging infrastructure, at a cost of roughly \$7 million per year. He said the city plans to use the funds provided by House Bill No. 1066 for debt repayment and infrastructure costs.

Representative Dockter said he is not suggesting special assessments be eliminated entirely. He said an infrastructure tax simply would provide an additional tool to fund improvements. He said concerns have been raised that not all individuals subject to the infrastructure tax would benefit from improvements funded by the tax. He said a similar situation exists with taxes levied for schools. He said not all taxpayers have children attending school, yet

many support taxes for schools as a matter of supporting the public good. He said the potential for double taxation that might arise from the imposition of an infrastructure tax can be avoided by exempting properties with existing special assessment debt from the infrastructure tax until the special assessment debt is paid. He said the concept of an infrastructure tax was developed to allow cities to propose alternative funding options to voters.

Chairman Grueneich said he appreciates that all cities are different and have different funding needs.

Senator Cook said the provision of free public schools is required by the Constitution of North Dakota. He said the provision of roads is not. He said when the concept of an infrastructure tax initially was raised, it was raised in the context of being used to eliminate special assessments. He said now the conversation has shifted to adding an infrastructure tax as another tool in a community's toolbox, which raises some concerns. He said the benefit of the special assessment method is a property owner should not be paying an assessment unless the property owner is receiving a benefit. He said the link between payment and the receipt of a benefit is removed with the imposition of an infrastructure tax. He said the primary focus of any discussion on special assessments should be the role of developers in the payment of upfront costs for new developments.

Representative Headland said the presentations by various city representatives illustrate the cost of providing local development and maintenance will be the same, regardless of the method used to fund the costs. He said he did not think the committee needed to move forward with the bill draft.

It was moved by Representative Headland and seconded by Senator Kreun that the bill draft be tabled.

The Legislative Council staff said the document the committee reviewed is a copy of Engrossed House Bill No. 1474, distributed for purposes of soliciting discussion from city representatives, and has not yet taken the form of an interim committee bill draft.

The motion was withdrawn.

Chairman Grueneich said it appears the committee's preference is for individual legislators to introduce legislation on this topic.

Representative Dockter said the role of interim committees is to gather information. He said legislation is best left for introduction by individual legislators.

Senator Cook said he would support reassuring city representatives that the committee has concluded its work on the topic of special assessment revenue replacement options.

It was moved by Representative Headland, seconded by Senator Kreun, and carried on roll call vote that the committee conclude its study of special assessment revenue replacement options. Representatives Grueneich, Dockter, Guggisberg, Hatlestad, Headland, Mitskog, and Steiner and Senators Cook, Dotzenrod, Kannianen, Kreun, Patten, and Unruh voted "aye." No negative votes were cast.

ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Chairman Grueneich called on Ms. Ellen Harpel, Founder, Smart Incentives, appearing via phone, for a presentation ([Appendix J](#)) regarding evaluating the effectiveness of economic development tax incentives. Ms. Harpel said the purpose of incentives is not only to secure a deal. She said incentives should be used to achieve a community's larger economic development goals. She said companies are seeking well-designed incentive programs that work for both business and the community to drive long-term, mutually beneficial, economic development projects. She said well-designed incentives have clear and measurable goals, provide tax breaks after certain benchmarks or commitments have been met, set caps on outlays, and include built-in reporting mechanisms.

In response to a question from Representative Headland, Ms. Harpel said most high-value incentives take the form of a tax break rather than a grant.

Chairman Grueneich called on the Legislative Council staff for presentation of a memorandum entitled [Fuel Tax Rate Changes](#).

In response to a question from Senator Dotzenrod, the Legislative Council staff said the tax exemption for fuel used for heating purposes was enacted in 2009. She said she could provide additional information on the manner in which fuel tax revenue is distributed.

Representative Ertelt said he would be interested in reviewing information regarding the fuel tax revenue collected each year and the number of road miles serviced with that revenue.

Chairman Grueneich said some of the information Representative Ertelt is seeking might be in the legislative history for a fuel tax rate change bill introduced during the 2019 legislative session.

Representative Dockter said he would be interested in reviewing the amount of revenue a one cent fuel tax increase would have generated over the past few years.

In response to a question from Representative Mistkog, the Legislative Council staff said the Tax Department's publication *State and Local Taxes - An Overview and Comparative Guide* provides a table that lists motor fuel tax rates by state. She said she would provide a copy of the table to the committee members.

Senator Cook said he would be interested in actions other states have taken to reduce the use of fuel. He said some states are providing incentives for electric vehicles and increasing tolls on roads to raise funds for road maintenance.

Chairman Grueneich called on Ms. Lies and Mr. Myles Vosberg, Director of Tax Administration, Tax Department, for a presentation of fiscal information (Appendices [K](#) and [L](#)) relating to coal severance and conversion tax exemptions, oil and gas gross production and oil extraction tax exemptions, and fuel tax refunds for certain users. Ms. Lies said coal severance and coal conversion taxes are imposed as payments in lieu of taxes and are reported to the Tax Department on a monthly basis. She said coal used to heat buildings in this state, used by this state or a political subdivision of this state, or used in agricultural commodity processing facilities located in this state or an adjacent state is exempt from tax. She said 246,926 tons of coal were exempt from tax in 2019, which amounts to \$97,536 in lost tax revenue. She said 85 percent of coal conversion facility taxes are allocated to the general fund and the remainder is allocated to the county in which the coal was produced. She said new electrical generating plants, or plants that have been repowered, are exempt from the state's portion of the coal conversion tax for the first 5 years. She said the Tax Department used estimates to calculate the revenue that would be lost on a new or repowered electrical generating plant because currently there are no new or repowered plants in the state. She said the estimated annual tax reduction would be \$293,004 for a small plant and \$1,445,000 for a large plant.

Mr. Vosberg said an exemption from oil extraction tax is available for production from stripper wells, which resulted in \$258,710,689 in reduced tax collections for fiscal years 2015 through 2019. He said a reduced tax rate of 2 percent is available for the first 18 months, or the first 75,000 barrels, of production from new, non-Bakken wells. He said the rate reduction resulted in \$5,821,264 in reduced tax collections for fiscal years 2015 through 2019. He also provided the amount of lost tax revenue that resulted from motor vehicle fuel, special fuel, and aviation fuel refunds.

In response to questions from Senator Dotzenrod and Chairman Grueneich, Mr. Vosberg said he could provide additional information regarding the reason for the reduced refund amounts for motor vehicle fuel used for industrial purposes in fiscal year 2016 and emergency medical service purposes in fiscal year 2017. He said some of the reductions might be linked to more equipment running on diesel fuel.

Representative Steiner said it might be beneficial to lower the fuel tax rate rather than offer refunds once the cost of wages and benefits for the employees needed to process the refunds is taken into account.

Chairman Grueneich called for comments from interested persons regarding the committee's study of economic development tax incentives. No comments were received.

TAXATION OF ELECTRONIC SMOKING DEVICES STUDY

Chairman Grueneich called on Ms. Heather Austin, Executive Director, Tobacco Free North Dakota, for a presentation ([Appendix M](#)) regarding recent federal changes increasing the legal age to purchase tobacco products to age 21 and the United States Food and Drug Administration's (FDA) plans to restrict sales of flavored e-liquid. Ms. Austin said the minimum age at which tobacco products can be purchased was raised at the federal level from age 18 to age 21 on January 1, 2020. She said the FDA recently announced it will be enforcing restrictions on most flavored liquid for cartridge-based e-cigarettes. She said Tobacco Free North Dakota recommends updating state laws to match the federal age restrictions and to eliminate all flavored tobacco products. She said mint flavored e-cigarette products are the most popular flavor among youths. She provided information ([Appendix N](#)) regarding the youth e-cigarette epidemic.

Chairman Grueneich called on Ms. Kodi Pinks, Epidemiologist, State Department of Health, for a presentation ([Appendix O](#)) regarding vaping-related illness cases in North Dakota and updated vaping information released by the Centers for Disease Control and Prevention (CDC).

In response to a question from Chairman Grueneich, Ms. Pinks said the majority of the 20 lung injuries in this state were in individuals aged 18 to 24. She said 38 percent of the individuals with lung injuries reported buying the tetrahydrocannabinol (THC) component of their vaping products at a pop-up shop and 67 percent reported buying the cannabidiol (CBD) component of their vaping products from a vape shop. She said individuals also reported purchasing vaping products online or from another person.

In response to a question from Representative Headland, Ms. Pinks said the CDC cannot state conclusively that a single substance is the cause of all vaping-related deaths. She said the CDC has not deemed any particular brand of vaping products as safe. She said most users reporting lung injuries in North Dakota used refillable cartridges and black market products containing THC. She said the products used by those reporting lung injuries in North Dakota were not tested by the CDC as most users reported throwing out their products after becoming ill.

In response to a question from Senator Dotzenrod, Ms. Pinks said data was not gathered on whether individuals who reported lung injuries were using e-cigarettes as a tobacco cessation method.

In response to a question from Representative Guggisberg, Mr. Neil Charvat, Director, Tobacco Prevention and Control Program, State Department of Health, said e-cigarettes have not been approved by the FDA as a tobacco cessation device. He said the State Department of Health does not endorse vaping products as tobacco cessation devices because data relating to the safety and efficacy of using vaping products for this purpose is insufficient.

In response to a question from Representative Headland, Mr. Charvat said it is legal to buy products containing THC in some states. He said individuals might be bringing products purchased legally in other states into this state.

In response to a question from Representative Headland, Ms. Pinks said the CDC does not have sufficient data to say the entire outbreak of lung injuries is associated solely with the use of THC. She said lung injuries have been found in users who reported using products that only contained nicotine.

Representative Headland said it is important to ensure vaping products are safe; however, caution should be exercised against over-regulating established companies if it appears the majority of cases are associated with black market products.

In response to a question from Representative Ertelt, Ms. Pinks said the State Department of Health followed the CDC's guidance regarding what constitutes a lung injury case.

In response to a question from Representative Ertelt, Mr. Charvat said some individuals have recovered from vaping-related lung injuries. He said it is difficult to predict whether the more serious cases of lung injuries will subside over time or be permanent.

Ms. Pinks said 70 percent of the individuals who reported lung injuries in this state reported lasting impacts from their injuries 2 months after the onset of the injury.

In response to a question from Chairman Grueneich, Ms. Pinks said the CDC changed its criteria for reporting lung-related injuries in November 2019 to require hospitalization before the case could be counted as a vaping-related lung injury. She said the CDC instituted this requirement to decrease the chances of confusing vaping-related lung injuries with lung injuries caused by the cold or flu. She said individuals reporting lung injuries in North Dakota received viral panels and a flu test to rule out other illnesses before the lung injury was classified as a vaping-related lung injury.

In response to a question from Representative Mitskog, Ms. Pinks said the State Department of Health does not have data regarding the cost of lung injuries, but the associated costs are something the department would like to investigate further as it continues to monitor lung injury cases in the state.

Senator Mitskog said she would encourage the department to look at costs because respiratory injuries often can be chronic and require ongoing medical care.

In response to a question from Senator Cook, Mr. Charvat said the only way to use products associated with e-cigarettes is to inhale the product.

Senator Cook said law enforcement officials recently presented information related to vaping at a local Kiwanis meeting. He said the committee might benefit from receiving a similar presentation.

In response to a question from Representative Hatlestad, Ms. Pinks said mint and fruit flavors were the most popular among users who reported lung injuries in this state.

Mr. Charvat said data shows youth prefer flavored products and flavoring might be one of the factors that attracts youth to vaping products.

In response to a question from Representative Headland, Mr. Charvat said a closed pod generally contains nicotine, flavoring, and some form of vegetable oil. He said the vitamin E acetate found in some products is safe when ingested, but can become harmful when inhaled.

In response to a question from Representative Rohr, Mr. Charvat said the State Department of Health did not begin tracking data related to e-cigarettes until 2011. He said data shows the number of youths using vaping products on a daily basis increased from 1.7 percent in 2011 to 33 percent in 2019. He said additional work needs to be completed to determine the type of vaping-related data the department should be tracking.

Chairman Grueneich said existing data seems to support increasing the legal age to purchase vaping products to age 21 to stem the use of these products by youth.

Chairman Grueneich called on Ms. Robin Lang, Assistant Director, Educational Equity and Support, Department of Public Instruction, for a presentation ([Appendix P](#)) regarding the use of electronic smoking devices by minors. Ms. Lang said the youth risk behavior survey was developed by the CDC to help monitor health risk behaviors. She said the survey has been administered in this state in each odd-numbered year since 1995. She said schools either volunteer to participate in the survey or are selected randomly to participate. She said the survey includes a question regarding how students self-report obtaining vapor products. She said 66.7 percent of high school students and 89.9 percent of middle school students reported they did not use vapor products in the last 30 days. She said the survey indicates students most commonly acquire the products by borrowing them from others. She said students also reported acquiring vapor products by giving someone else money to acquire the products or buying the products themselves from a store.

In response to a question from Chairman Grueneich, Ms. Lang said schools have seen decreased tobacco use with increased tobacco education. She said it is important for schools to work with law enforcement and health department partners to educate students about the risks of certain behaviors.

In response to a question from Representative Rohr, Ms. Lang said roughly 12,000 students take the survey in each odd-numbered year.

In response to a question from Representative Guggisberg, Ms. Lang provided supplemental information ([Appendix Q](#)) subsequent to the meeting indicating 79.6 percent of high school students in 2017, and 76 percent of high school students in 2015, reported they did not use vapor products in the 30 days prior to completing the survey.

Representative Guggisberg said the percentage of students using vapor products in high school is higher than he anticipated. He said he has children in middle school who indicate the vaping problem in schools is getting worse. He said he would rather not let the problem get to the point where schools have to install cameras to combat vaping.

Chairman Grueneich called on the Legislative Council staff for presentation of a bill draft [[21.0052.01000](#)] regarding the taxation of electronic smoking device liquid. The Legislative Council staff said the bill draft mirrors existing licensing and reporting requirements for those selling cigarettes or other tobacco products. She said the bill draft requires dealers and distributors that sell e-liquid to be licensed and keep records of purchases and deliveries of e-liquid. She said the bill draft defines e-liquid and subjects e-liquid to a per milliliter excise tax at a rate that is not specified in the bill draft. She said the rate would need to be specified before the bill draft could be introduced. She said the excise tax is levied on e-liquid purchased by distributors or on e-liquid purchased by retailers if the tax has not yet been paid by a distributor. She said a use tax is imposed on e-liquid purchased by a consumer if the tax has not yet been paid by either a distributor or a retailer. She said an inventory tax also is imposed on e-liquid inventory purchased before the effective date of the bill draft. She said the Tax Department requested a delayed effective date of January 1, 2022, for purposes of notifying distributors and retailers of the new tax and developing reporting forms.

In response to a question from Senator Cook, the Legislative Council staff said the bill draft is before the committee for discussion purposes. She said a variety of opinions were expressed by committee members regarding the committee's study of the feasibility and desirability of taxing e-cigarettes at the previous meeting. She

said some committee members believed the issue was more of a regulatory matter than a tax matter. She said others believed the committee had yet to complete its due diligence in studying the topic and more information should be solicited from the State Department of Health and the Department of Public Instruction. She said the committee also discussed the voter's history of introducing initiated measures to address areas of public concern. She said the bill draft was prepared in consultation with the Tax Department to provide an administratively workable example of the most commonly applied method of taxation for vapor products should the committee or an individual legislator be interested in proceeding with the bill draft. She said the landscape has changed markedly since the committee's previous meeting in regard to the reduced number of reported lung injury cases and federal changes increasing the minimum age to purchase tobacco products to age 21.

Senator Cook said it might be wise to request direction from the Chairman of the Legislative Management before the committee proceeds further with addressing matters concerning the regulation, rather than taxation, of e-cigarettes.

Chairman Grueneich said the purpose of the bill draft is to provide an administratively workable example of a tax on e-liquid. He said he does not envision the committee acting on the bill draft, but the bill draft could be used as a starting point if an individual legislator wishes to introduce a bill on this topic. He said he anticipates the committee will complete its work on this study topic after hearing from the remainder of today's presenters.

In response to a question from Senator Unruh, the Legislative Council staff said the tax imposed in the bill draft is imposed based on the number of milliliters of e-liquid, without considering the nicotine concentration of the e-liquid. She said the committee reviewed concerns regarding taxing e-liquid on a per milliliter basis at the previous meeting, which included concerns that e-liquid would be manufactured with a very high nicotine concentration to reduce tax liability. She said the committee also learned tax imposed on a per milliliter basis was the most prevalent method of taxation among states that impose a tax. She said this reason, along with the Tax Department's preference any tax imposed be imposed on a per milliliter basis, was the reason this method of taxation was used in the bill draft.

Representative Steiner said she is not sure taxation will solve the problem of vapor product use by minors. She said a bill draft addressing the root of the problem, including how minors are acquiring these products, and the prevalence of black market products, would be preferable.

Chairman Grueneich called for comments from interested persons regarding the bill draft and the committee's study of the taxation of electronic smoking devices.

Ms. Dominique Scobee, freshman, Jamestown High School, provided testimony ([Appendix R](#)) indicating she believed raising the tax on vapor products would help lower the number of students using vapor products.

Ms. Madison Grieve, sophomore, Jamestown High School, also provided testimony ([Appendix S](#)) supporting raising the price of vapor products to make the products less accessible to students.

In response to a question from Representative Hatlestad, Ms. Grieve said the potential dangers associated with vapor products do not deter teenagers from using these products because teenagers often feel as though they are invincible.

In response to a question from Representative Mitskog, Ms. Grieve said the risk that vapor products might kill a user might serve as an incentive to some users considering the increased rates of depression among teenagers.

In response to a question from Chairman Grueneich, Ms. Scobee said at least 20 of the 200 students in her freshman class use vapor products. She said she expects the number of users is higher in the junior and senior classes.

Ms. Grieve said about 75 of the 200 students in her sophomore class use vapor products.

In response to a question from Chairman Grueneich, Ms. Grieve said most students get their vapor products from "plugs," who are individuals who can purchase the products. She said a parent of a student in her grade buys vapor products and sells them to students for a profit. She said she has not heard of any students buying vapor products online.

Ms. Scobee said students also obtain vapor products from older siblings and other family members and from high school seniors. She said vapor products are easy to obtain if a student has the money to buy the products.

In response to a question from Representative Rohr, Ms. Scobee said she has not received any school-based education regarding the negative impacts of vapor products. She said the only information she received on vapor products was from a youth summit she attended.

Ms. Grieve said she also has not received any school-based education on vapor products.

In response to a question from Representative Headland, Ms. Scobee said she has not noticed a change in the prevalence of vapor products in schools since the federal minimum age to purchase tobacco products was raised to age 21. She said many students stock up on vapor products so students might have products left over from before the federal age to purchase tobacco products was raised. She said some retailers in rural areas do not verify the purchaser's age or sell to the purchaser knowing the purchaser is under age 21.

Ms. Grieve said many students will purchase vapor products as soon as they have money to avoid running out of vapor products.

In response to a question from Senator Dotzenrod, Ms. Grieve said school administrators know vaping is a problem in schools but do not have the resources to address the issue due to the prevalence of vapor product use among students.

Ms. Austin provided information ([Appendix T](#)) regarding recommendations for updating the state's tobacco tax laws. She said a tax imposed as a percentage of the wholesale price of products would be preferred to a per milliliter tax. She said for the tax to have a noticeable price impact on small, cartridge-based pods, a rate of 30 cents per milliliter is recommended if a per milliliter tax is imposed.

In response to a question from Representative Guggisberg, Ms. Austin said the Taxation Committee is the only interim committee studying any topic related to e-cigarettes.

Ms. Susan Kahler, Tobacco Prevention and Control Coordinator, Bismarck-Burleigh Public Health, presented testimony ([Appendix U](#)) on behalf of Ms. Melissa Markegard, Tobacco Prevention Coordinator, Fargo Cass Public Health. Ms. Kahler said a minor caught using or possessing a tobacco product or vaping device in Fargo will be issued a citation and required by ordinance to attend a tobacco education program. She said 23 citations were issued to minors in 2014, and 85 citations were issued in 2019. She said the increase in citations for the use of tobacco products is attributable to the use of e-cigarettes. She said citations have been issued to minors as young as age 10. She said increasing the tax on vapor products and classifying the products as tobacco products is an effective way to reduce tobacco use among minors. She said the first individual who reported a vaping-related lung injury in this state purchased the products from a vape shop in Bismarck, rather than from a black market source.

In response to a question from Representative Mitskog, Ms. Kahler said she has encountered individuals under age 18 who need assistance to stop using vapor products. She said Bismarck-Burleigh Public Health is undertaking a pilot program with Bismarck High School to provide services to teens trying to stop using vapor products.

Senator Kannianen said he would be interested in reviewing data from the 20 states that impose a separate tax on vapor products to see if the tax had any impact on the use of vapor products by minors.

Senator Kreun said imposing too high of a tax on a product can lead to increased black market sales. He said care must be taken when determining the appropriate amount of tax to levy.

No further business appearing, Chairman Grueneich adjourned the meeting at 4:00 p.m.

Emily L. Thompson
Code Revisor

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