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## TAXATION COMMITTEE

Wednesday, July 15, 2020

Representative Jason Dockter, Chairman, called the meeting to order at 10:00 a.m.

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

**Members absent:** Representatives Matt Eidson, Ben Koppelman

**Others present:** See [Appendix A](#)

**It was moved by Representative Steiner, seconded by Senator Kreun, and carried on a voice vote that the minutes of the January 29, 2020, meeting be approved as distributed.**

### ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY

Chairman Dockter called on Ms. Emily L. Thompson, Code Revisor, Legislative Council, to present a memorandum entitled [Economic Development Tax Incentives Study - Evaluation Chart](#).

In response to a question from Representative Ertelt, Ms. Thompson said the evaluation chart provides a broad summary of the committee's progress in collecting the information necessary to address each incentive evaluation question. She said the questions are very subjective in nature and information pertaining to each question might not be received each interim, possibly due to the nature of the incentive or a lack of public comments received on the incentive.

Chairman Dockter said this interim marks the end of the first 3-interim study cycle since the incentive evaluation provisions were codified.

Senator Cook said the first cycle of evaluations has been very worthwhile.

Chairman Dockter called on Ms. Thompson to present a memorandum entitled [Fuel Tax Revenue and Distributions](#). Ms. Thompson said the majority of motor fuel and special fuel tax revenue is deposited in the highway tax distribution fund. She said aviation fuel tax revenue is deposited in the Aeronautics Commission special fund. She said the memorandum provides the amount of revenue generated by motor vehicle and special fuels tax and the amount of revenue that would be generated by a one-cent fuel tax increase.

In response to a question from Senator Unruh, Ms. Thompson said she could provide the committee with information regarding the balance of the Aeronautics Commission special fund.

In response to a question from Chairman Dockter, Ms. Thompson said fuel tax rates were last increased in 2005 when the rate was changed from 21 to 23 cents.

Representative Headland said he would be interested in receiving information regarding the amount expended from the general fund for road needs and the ability of fuel tax revenue to cover the cost of the state's road needs. He said the committee would benefit from receiving information regarding whether fuel and other taxes and fees are generating a sufficient amount of revenue to meet federal matching requirements related to roads. He said this information is important because it appears unlikely legacy fund earnings will be available to supplement the fuel tax revenue stream for road purposes.

Chairman Dockter requested Ms. Thompson request a presentation on that topic from a representative of the Department of Transportation for the committee's next meeting.

Chairman Dockter said about \$7.4 million in tax revenue would be generated from every one-cent increase in fuel tax.

Representative Steiner said she has concerns regarding the use of the legacy fund to cover costs already funded by a dedicated revenue source. She said if the state requires additional road funding, those funds should be derived from a gradual increase in fuel tax rather than from the legacy fund.

Senator Kannianen said he would be interested in reviewing the most recent road needs study published by the Upper Great Plains Transportation Institute.

Chairman Dockter requested Ms. Thompson request a presentation of that study for the committee's next meeting.

Representative Ertelt said he would be interested in receiving historical information regarding the cost of a gallon of fuel and the effective tax rate on that fuel.

Chairman Dockter requested Ms. Thompson provide that information at the committee's next meeting.

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

### **TAXATION OF ELECTRONIC SMOKING DEVICES STUDY**

Chairman Dockter called on Ms. Thompson to present a memorandum entitled [\*Impact of Taxation on the Use of Vapor Products\*](#). Ms. Thompson said the memorandum compares the rate of vapor product use by minors both before and after a vapor product tax was imposed in various states. She said correlation does not always indicate causation and other factors might have led to an increase or decrease in the rate of vapor product use by minors. She said additional state-level data will be available in August and she can provide an update to this memorandum at the committee's next meeting.

Chairman Dockter said concerns with electronic smoking devices seem to center more around health issues than tax issues. He said he is not sure tax legislation will curb the problem.

Senator Cook said he would be interested in any studies that have discussed whether sin taxes are successful in modifying behavior.

Senator Unruh said she disagrees with the degree to which vapor products have been presented as dangerous. She said some products can be very dangerous while others only are minimally harmful. She said sin taxes are not fair and do not impact behavior. She said she does not believe increased taxation will decrease the use of vapor products. She said if legislation is pursued to impose additional tax on vapor products, the tax should be based on the level of nicotine in the e-liquid, rather than the volume of the e-liquid. She said this approach would prevent the practice of manufacturing very concentrated e-liquid to pay less tax, a practice that could be even more dangerous for minors who do not know how to properly use the products.

Senator Kreun said it is important to track the purposes for which sin tax revenue is being expended. He said sin tax revenue often is directed toward programs to prevent or treat the negative consequences of the item being taxed.

Chairman Dockter said it is important to track the manner in which sin tax revenue is being expended and whether the tax is impacting the frequency in which the product is being used.

Representative Headland said he anticipates legislation to tax vapor products will be introduced during the upcoming legislative session. He said some e-liquid does not contain any nicotine. He said it would be a stretch to tax a product that does not contain nicotine as a tobacco product.

Senator Unruh said it is important to distinguish nicotine from tobacco. She said the two substances are not the same and should not be taxed in the same manner.

Senator Patten said sin taxes are imposed for various purposes. He said one purpose is to provide a revenue stream to help alleviate the negative impacts caused by the product or activity being taxed. He said another purposes is to increase the cost of the product as a means to deter the use of the product. He said decreased vapor product use is unlikely to result from an increase in taxation.

Chairman Dockter called on Mr. Brett Anderson, School Resource Officer, and Mr. Luke McKay, Youth Worker Supervisor, Police Youth Bureau, City of Bismarck Police, for a presentation ([Appendix B](#)) regarding the types of electronic smoking devices and the use of electronic smoking devices by minors. Mr. Anderson said vapor products range from small devices resembling a flash drive to large containers of e-liquid used to refill vapor devices. He said the number of minors cited for using e-cigarettes increased dramatically in 2017. He said the majority of citations issued in 2019 were issued to students aged 14 to 15; however, citations have been issued to children as young as age 12.

In response to a question from Senator Cook, Mr. Anderson said a juvenile age 14 or younger issued a citation might be referred to the Police Youth Bureau. He said a citation issued to a minor older than age 14 includes a \$50 fine and requires the minor to attend a tobacco cessation class. He said because the fine is imposed pursuant to city ordinance, the fine amount might vary from city to city.

In response to a question from Representative Headland, Mr. Anderson said minors commonly acquire vapor products from other students, older friends and adults, and the Internet. He said the federal increase in the legal age to purchase vapor products might have hindered student access to the products. He said cost has not served as a barrier to access because students have a large amount of disposable income from employment. He said most local convenience store operators have passed compliance checks conducted by the police. He said most minors have transitioned from using traditional cigarettes to using vapor products. He said use of vapor products by minors is a growing problem that will be difficult to reverse. He said vapor products that are not flavored are hard to detect because they do not have an odor.

In response to a question from Senator Cook, Mr. Anderson said a tax increase is unlikely to decrease the use of vapor products by minors because minors have a large amount of disposable income. He said educating students about the negative effects of vapor product use might be the most effective way to reduce the use of vapor products by minors. He said a tobacco cessation coalition distributed pamphlets to students describing the dangers of using vapor products.

Senator Cook said the use of vapor products by minors is a problem that needs to be addressed.

In response to a question from Senator Kreun, Mr. Anderson said a parent is not required to attend tobacco cessation classes with a minor issued a citation.

Senator Kreun said requiring a parent to attend tobacco cessation classes with the minor might be a strong deterrent for a minor considering using vapor products.

Mr. McKay said it might be helpful for a parent to attend classes with younger children issued a citation.

In response to questions from Representative Headland, Mr. Anderson said citations alone do not dissuade minors from using vapor products. He said many students have been issued multiple citations. He said it is difficult to detect whether students are vaping marijuana products because those products generally do not have a smell. He said vapor detection devices are available but are very expensive, costing upwards of \$500 per device. He said students are very adept at hiding the use of vapor products.

In response to a question from Chairman Dockter, Mr. Anderson said testing equipment is available which can detect the presence of marijuana or cannabidiol (CBD) oil in electronic smoking devices.

In response to a question from Representative Steiner, Mr. Anderson said it is difficult to find the individuals who are supplying vapor products to minors because minors will not disclose the identity of their suppliers.

Mr. McKay said vapor products are used by all types of students and are easy to conceal. He said the rate of vapor product use among students likely is much higher than the reported rate. He said he estimates the rate of use at upwards of 70 percent. He said it is difficult to communicate the dangers of using vapor products to students.

In response to a question from Chairman Dockter, Mr. Anderson said vapor products can be purchased at convenience stores, vape shops, and over the Internet.

In response to a question from Chairman Dockter, Mr. McKay said he is not aware of any instances of severe lung damage in local students; however, students tend to be coughing and clearing their throats more frequently than they did in the past.

Chairman Dockter said the rate of vapor product use among minors is disturbing and legislators seem committed to finding a solution during the upcoming legislative session to reduce the rate of use among minors.

Ms. Thompson said written comments ([Appendix C](#)) were submitted by Ms. Heather Austin, Executive Director, Tobacco Free North Dakota, in advance of the meeting.

### CHARITABLE GAMING TAX STUDY

Chairman Dockter called on Mr. Don Santer, Treasurer, Charitable Gaming Association of North Dakota, for a presentation ([Appendix D](#)) regarding the impact of payout percentages on gaming revenue. Mr. Santer said electronic pull tab machines are limited to a maximum payout percentage of 90 percent. He said a higher payout percentage increases the rate of play. He said markets with a payout percentage of 90 percent or greater generate 200 percent higher net sales than markets with a payout percentage of 80 percent.

In response to a question from Representative Ertelt, Mr. Santer said he would recommend against legislation that sets a maximum or minimum payout percentage. He said payout percentage decisions are best left to industry members to determine based on the conditions in the market in which the industry member operates.

Chairman Dockter called on Mr. Douglas Yankton, Sr., Chairman, Spirit Lake Tribe, for a presentation ([Appendix E](#)) regarding the committee's study of charitable gaming tax. Mr. Yankton said the tribes are subject to stringent gaming regulations and charities should be held to the same standards. He said winnings derived from reservation casinos are subject to more stringent tax reporting requirements than winnings derived from locations outside reservation boundaries. He said revenues from the Spirit Lake Casino and Resort have decreased by 45 percent since electronic pull tab machines were allowed in August 2018.

Chairman Dockter called on Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Casino and Resort, Spirit Lake Tribe, for a presentation ([Appendix F](#)) regarding the committee's study of charitable gaming tax. Ms. Brown said electronic gaming machines located outside reservation boundaries should be subject to the same regulations and technical standards as electronic gaming machines located within the boundaries of the reservation. She said Gaming Laboratories International LLC published a white paper ([Appendix G](#)) on illegal and unregulated gambling activity which recommends a regulatory review of each type of gaming device.

In response to a question from Representative Ertelt, Ms. Brown provided the federal Indian Gaming Regulatory Act ([Appendix H](#)) and the January 3, 2013, Amended Gaming Compact ([Appendix I](#)) between the Spirit Lake Tribe and the State.

Chairman Dockter called on Mr. Troy Seibel, Chief Deputy Attorney General, and Ms. Deborah McDaniel, Gaming Director, Attorney General's office, for a presentation ([Appendix J](#)) regarding the office's Gaming Division budget. Mr. Seibel said the Gaming Division's budget for the 2019-21 biennium was \$3.4 million. He said \$510,000 of the \$3.4 million is derived from the gaming tax. He said the \$510,000 in gaming tax revenue included in the Gaming Division's budget is passed through the Gaming Division and distributed to political subdivisions as gaming enforcement grants. He said gaming tax revenue does not directly fund the operations of the Gaming Division. He said the Gaming Division regulates 325 charitable organizations that conduct charitable gaming at 995 sites in the state. He said 2,582 electronic pull tab devices are operating at 592 sites in this state as of May 30, 2020. He said these devices are operated by 201 charitable organizations in 210 cities and 48 counties. He said the Gaming Division also regulates gaming conducted by each of the five tribes in the state under the terms of gaming contracts entered by the state and each tribe. He said the Gaming Division has 4 fewer full-time equivalent (FTE) positions than the division had during the 2015-17 biennium due to state budgetary challenges. He said additional resources are needed in the Gaming Division due to the explosive growth of electronic pull tabs. He said the Gaming Division anticipates \$1.8 billion in gaming gross proceeds and \$26.8 million in gaming tax during the 2019-21 biennium. He said the Gaming Division supports robust regulation of gaming devices. He said gaming systems proposed for use in this state by manufacturers must be tested before a license is issued to a manufacturer.

In response to a question from Senator Unruh, Ms. McDaniel provided the committee a list ([Appendix K](#)) of the 325 charitable organizations licensed in this state to conduct charitable gaming.

In response to a question from Senator Cook, Mr. Seibel said the Gaming Division has 1.5 FTE positions dedicated to regulating gaming at tribal casinos to the degree required by the gaming compacts. He said regulation includes sporadic onsite visits and random testing of 25 to 35 percent of the machines located in tribal casinos. He said the Gaming Division does not have the resources to conduct random inspections and maintain the same level of gaming regulation at the 592 sites outside reservation boundaries where electronic pull tab devices are operating.

In response to a question from Chairman Dockter, Mr. Seibel said lack of manpower results in the gaming conducted in the 210 cities located outside reservation boundaries being regulated less stringently than the gaming conducted within the boundaries of the five reservations where tribal casinos are located.

In response to a question from Senator Cook, Mr. Seibel said a different gaming organization notified the Attorney General's office of the gaming violation by Powerhouse Gaming Inc. He said the Attorney General's office launched its investigation after receiving notification of the violation. He said the random seizure and testing of some of Powerhouse Gaming's machines confirmed the gaming violation. He said the type of gaming violation found in Powerhouse Gaming's machines would have been uncovered through the use of the types of inspections randomly performed on gaming machines located in tribal casinos.

In response to questions from Representative Headland, Mr. Seibel said the systems used in electronic pull tab machines are tested before the system is licensed for use in the state. He said each electronic pull tab machine is not tested after it is placed in service. He said the Attorney General's office has received anecdotal information regarding the use of electronic pull tab machines to engage in money laundering but the office has not received any credible evidence money laundering actually is occurring.

In response to a question from Chairman Dockter, Mr. Seibel said the Gaming Division lacks sufficient staff resources to fully enforce gaming regulations. He said the legal structure pertaining to gaming regulation is sufficient.

In response to a question from Senator Cook, Mr. Seibel said the funds the Gaming Division would require to expand gaming regulation enforcement would depend on how robustly the Legislative Assembly would like electronic pull tab machines regulated.

In response to a question from Representative Hatlestad, Mr. Seibel said the gaming division has 1.5 FTE gaming auditor positions to regulate gaming at tribal casinos and 6 FTE gaming auditor positions to regulate gaming activities at the other 592 sites where electronic pull tabs devices operate.

In response to a question from Representative Headland, Mr. Seibel said the Gaming Division's FTE staff was reduced by 3 during the 2017 legislative session, before the use of electronic pull tab devices was authorized in this state.

In response to a question from Senator Cook, Ms. McDaniel said it is difficult to predict how many staff the Gaming Division would need to regulate electronic pull tab devices adequately because the use of these devices continues to grow. She said a record amount of \$84.5 million was wagered on electronic pull tab devices in the state in May 2020.

In response to a question from Chairman Dockter, Ms. McDaniel said the Gaming Division likely will need to request an additional \$475,000 from the 2021 Legislative Assembly to add licensing, distribution, and manufacturing components to the online filing and payment software funded by the 2019 Legislative Assembly.

In response to a question from Senator Unruh, Ms. McDaniel said the Internal Revenue Service does not require an organization to issue a 1099 form for winnings of less than \$600. She said law prohibits the winnings from each pull on a pull tab from exceeding \$500. She said the winnings from each pull on a pull tab are calculated separately, so even if a single pull tab contained six winning pulls of \$500 each, the threshold for issuing a 1099 form would not be met.

In response to a question from Representative Headland, Ms. McDaniel said the individual winnings for other types of charitable gaming, such as bingo or raffles, may exceed \$500. She said winnings that exceed \$600 for these types of charitable games would trigger the requirement to issue a 1099 form.

In response to a question from Senator Dotzenrod, Mr. Seibel said the penalties for violating state gaming laws include fines and license revocations. He said local law enforcement officers might become involved if there is an allegation of criminal activity.

In response to a question from Chairman Dockter, Mr. Seibel said the Gaming Division could encounter more instances of wrongdoing in the future as a result of the increased amount of gaming activity being conducted on electronic pull tab devices. He said when the Attorney General's office began to formulate rules relating to electronic pull tabs, the office wanted to limit the number of machines allowed to five machines per site. He said after receiving a large amount of pushback from industry representatives, the office drafted rules that allow 10 machines per site.

In response to a question from Senator Cook, Mr. Seibel said the Attorney General's office only involves local law enforcement if there is an allegation that a slot machine is operating, because that would be an allegation of criminal activity. He said local law enforcement is not involved in regulating or testing electronic pull tab devices.

In response to a question from Representative Headland, Mr. Seibel said the Attorney General's office likely will request funding for additional Gaming Division staff during the 2021 legislative session; however, the office is very mindful of the budget challenges the state will be facing in the upcoming biennium.

Chairman Dockter said committee members are encouraged to share the information received this interim with members of the Appropriations Committees to assist the committees in making determinations regarding the Gaming Division's budget requests, and any requests for additional Gaming Division staff, during the 2021 legislative session. He said the 2021 Legislative Assembly also will have to determine the degree of gaming regulation desired.

Senator Unruh said the degree of regulation and the frequency with which electronic pull tab devices should be inspected are policy decisions that will have to be made by the 2021 Legislative Assembly.

Ms. Thompson said written comments (Appendices [L](#) and [M](#)) were submitted by Ms. Lisa Vig, Director, Gambler's Choice, Lutheran Social Services of North Dakota, and Mr. Nathan Davis, Councilman, District 1, Turtle Mountain Band of Chippewa Indians, in advance of the meeting.

Senator Cook said, in reviewing Ms. Vig's testimony, he agrees additional funds are needed for gambling prevention and treatment in light of the explosive growth of gaming in the state. He said it also is logical to recognize there should be some correlation between the growth in gaming activities and the growth in the number of staff available to regulate gaming activities. He said, as policymakers, the Legislative Assembly has a duty to ensure the proper resources are available to regulate the gaming activities it authorizes.

In response to a question from Senator Cook, Ms. McDaniel said gambling prevention and treatment is funded with revenue from tribal casinos and the state lottery. She said revenue from charitable gaming is not used to fund gambling prevention or treatment.

Chairman Dockter said there are several policy issues relating to charitable gaming which will need to be addressed by the 2021 Legislative Assembly.

No further business appearing, Chairman Dockter adjourned the meeting at 12:35 p.m.

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Emily L. Thompson  
Code Revisor

ATTACH:13