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## TAXATION COMMITTEE

Thursday, September 10, 2020  
Roughrider Room, State Capitol  
Bismarck, North Dakota

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, Alisa Mitskog, Vicky Steiner; Senators Dwight Cook, Jim Dotzenrod, Jordan Kannianen, Curt Kreun, Dale Patten, Jessica Unruh-Bell

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

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

**It was moved by Representative Hatlestad, seconded by Representative Headland, and carried on a voice vote that the minutes of the July 15, 2020, meeting be approved as distributed.**

### REPORTS

Chairman Dockter called on Mr. Ryan Rauschenberger, Tax Commissioner, to present a report ([Appendix B](#)) compiling information submitted by counties and school districts that received an allocation of oil and gas gross production tax revenue. Mr. Rauschenberger said the reports submitted by counties contain the county's revenue and expenditure reports, information regarding the county's ending fund balance for major operating funds, the amount and use of any gross production tax revenue sent to townships, and the county's total general fund revenue as compared to gross production tax revenue collections. He said all oil-producing counties used gross production tax revenue for law enforcement costs and most also used gross production tax revenue for road and county administration costs. He said 16 counties received a total of \$185 million in gross production tax revenue allocations in calendar year 2019. He said reports from school districts that received oil and gas gross production tax revenue include the amount of gross production tax revenue received in fiscal year 2020 and whether the revenue was used for general operating expenses, debt service, capital projects, or another purpose. He said nearly all school districts reported using gross production tax revenue for general operating expenses. He said school districts have the option of including revenue and expenditure reports in the information submitted to the department or referring the department to the information submitted to the Department of Public Instruction.

In response to a question from Representative Ertelt, Mr. Rauschenberger said the department does not audit the data in the reports submitted by the counties and school districts.

In response to a question from Senator Cook, Mr. Rauschenberger said several school districts have yet to submit their reports. He said school districts have been busy dealing with issues related to the Coronavirus (COVID-19) pandemic and school districts report on a fiscal year basis, which just recently concluded. He said the statutory reporting provisions do not include a penalty for failing to provide a report.

Representative Headland said holding the final interim meeting earlier than usual also might contribute to the receipt of fewer reports.

In response to a question from Chairman Dockter, Mr. Rauschenberger said the reporting requirement for counties has been in place since 2011. He said the reporting requirement for school districts was added after 2011. He said the report aids users in comparing similar information in a similar manner because not all counties use uniform accounting systems. He said the Tax Department has not received any requests for the county or school district reports. He said information regarding gross production tax allocations is available on the State Treasurer's website. He said an individual seeking details beyond those contained in the reports would need to contact county or school district representatives.

Ms. Emily L. Thompson, Code Revisor, Legislative Council, said the Legislative Council has not received requests for the reports.

Representative Ertelt said it is beneficial for individuals to have access to the compiled reports.

Representative Steiner said the reports might have been more useful when changes were made to the allocation formula and legislators wanted to see the results of those changes at the county or school district level. She said the reports have served their purpose and there seems to be duplication in reporting requirements. She said she would not be opposed to efforts to eliminate the reports.

Representative Headland said an individual could gather the information in the reports from other sources fairly quickly.

Senator Unruh-Bell said provisions to eliminate the report failed to pass in a bill introduced during the 2019 legislative session.

Ms. Thompson said the 2017-18 interim Taxation Committee came to a similar conclusion about the utility of the reports last interim and introduced Senate Bill No. 2042 (2019) to eliminate the reporting requirements. She said the provisions to eliminate the reporting requirements failed to pass. She said a desire to retain the reports, at least for a brief time, was expressed last session to track the changes resulting from recent oil and gas tax allocation formula changes.

In response to a question from Chairman Dockter, Mr. Rauschenberger said the department would not be opposed to the elimination of the reporting requirements.

Chairman Dockter called on Ms. Carla Valentine, Program Manager, Office of Innovation and Entrepreneurship, Department of Commerce, to present the 2019 Business Incentive Accountability Report ([Appendix C](#)).

In response to a question from Representative Ertelt, Ms. Valentine provided information ([Appendix D](#)) regarding the cost to administer the business incentive accountability law.

Chairman Dockter called on Ms. Rikki Roehrich, Program Administrator, Division of Community Services, Department of Commerce, to present an annual report ([Appendix E](#)) pertaining to renaissance zone progress for calendar year 2019 and a summary of reports provided by cities that have a renaissance zone included in a tax increment financing district.

In response to a question from Representative Headland, Ms. Roehrich said the department receives inquiries to establish new renaissance zones. She said she is working with two communities that have shown interest in the program.

In response to a question from Representative Ertelt, Ms. Roehrich provided information ([Appendix F](#)) regarding the amount appropriated and expended to administer the renaissance zone program. She said \$874,000 in income tax exemptions were granted under the program in 2019. She said the cost of the program at the local level is the amount of property tax not collected during the 5-year exemption period.

### **ECONOMIC DEVELOPMENT TAX INCENTIVES STUDY**

Chairman Dockter called on Ms. Thompson to present a memorandum entitled [Historic Fuel Prices and Effective Fuel Tax Rates](#). Ms. Thompson said between 1994 and 2019, the effective tax rate for fuel ranged from a high of 19 percent in 1998 to a low of 7.1 percent in 2008.

Chairman Dockter said the last time the fuel tax rate was increased was in 2005.

In response to a question from Representative Headland, Mr. Rauschenberger said it would not be difficult for the Tax Department to administer a fuel tax based on a flat percentage, rather than a dollar amount. He said a flat sales tax has been administered in addition to a fuel tax in Illinois. He said the switch would require uprooting the current system and would place the requirement for reporting the tax on the retailer, rather than the distributor or wholesaler.

Representative Headland said a fuel tax increase applied when fuel prices are low might not be as burdensome for the consumer.

In response to a question from Senator Kreun, Mr. Rauschenberger said fuel tax is deposited in the highway tax distribution fund and then distributed to counties, cities, townships, and for public transportation needs.

Chairman Dockter called on Mr. William T. Panos, Director, and Mr. Shannon L. Sauer, Chief Financial Officer, Department of Transportation, for a presentation ([Appendix G](#)) regarding the past, present, and future of transportation funding.

Mr. Sauer said transportation revenue is derived from three main sources: federal funds, state funds from the highway tax distribution fund, and other state funding sources, such as funds from driver's license fees and oversize/overweight permits. He said \$550.5 million in transportation funds will be available for distribution during the 2019-21 biennium. He said these funds consist of \$185.6 million from diesel tax and special fuels excise tax collections, \$200.3 million from gasoline and gasohol taxes, and \$182 million from motor vehicle registration fees. He said funds are distributed 61.3 percent to the state highway fund, 22 percent to counties, 12.5 percent to cities, 2.7 percent to townships, and 1.5 percent for transit purposes. He said 18 percent of the roads in the state are eligible for federal funding.

In response to a question from Representative Steiner, Mr. Sauer said the Legislative Assembly injected a large amount of funds into the transportation system during the oil boom. He said the majority of the funds were directed to oil-impacted areas. He said the state's transportation system is in relatively good shape today but will rapidly deteriorate if the state does not continue to invest in maintaining the transportation system. He said the roadways have fared better than the bridges in the state. He said the state needs to invest in maintaining bridges.

Mr. Panos said North Dakota ranks 47<sup>th</sup> among the 50 states for bridge quality. He said the state has about 5,000 bridges. He said the federal government indicated the state needs to implement an immediate bridge inspection program because the bridges in the state are so poor. He said the state is spending millions of dollars this year and next year to address the problem. He said the oil boom caused excessive damage to roads. He said the state has one of the highest rates of oversize and overweight permits issued in the nation. He said 50 percent of road funding comes from the federal government and is matched by the state.

In response to a question from Representative Headland, Mr. Panos said North Dakota has an 80/20 federal state match. He said the state only needs to generate 20 percent of the required \$2.7 billion needed for transportation funding. He said if the state raised \$2.7 billion over a 10-year period, the state would only need \$40 million per year to elevate its transportation system to the federal standard and maintain it. He said there are two types of federal funding. He said the first type of federal funding is formula-based funding, which is critical for rural states. He said the second type of federal funding is discretionary funding, which consists of items like grants.

Chairman Dockter said each one-cent fuel tax increase generates \$7.4 million in additional annual revenue. He said a five-cent to six-cent fuel tax increase would generate the required \$40 million per year in state funding.

In response to a question from Chairman Dockter, Ms. Thompson said North Dakota has a relatively low fuel tax rate when compared to other states. She said North Dakota is ranked 40<sup>th</sup> among the 50 states for fuel tax rates.

Representative Hatlestad said it might be optimistic to assume the federal government will have adequate funds to maintain an 80/20 federal state match in light of the COVID-19 pandemic.

Mr. Panos said, while funding is not guaranteed, the federal government has indicated the funds will be available. He said funding always has been available either through formula funding or discretionary funding.

Senator Kreun said the eastern part of the state has road needs that are sometimes overlooked. He said counties and townships have the ability to share road funds.

In response to a question from Senator Kreun, Mr. Panos said two or more counties can enter a memorandum of understanding to share road funds, subject to certain restrictions.

Chairman Dockter called on Mr. Tim Horner, Transportation Engineer, and Dr. Alan Dybing, Associate Research Fellow, Upper Great Plains Transportation Institute, North Dakota State University, for a presentation ([Appendix H](#)) summarizing the findings of the Upper Great Plains Transportation Institute's 2020 report on the state's infrastructure needs.

In response to a question from Representative Headland, Mr. Dybing said the state has an adequate supply of gravel for the short term, but not for the long term.

Mr. Horner said over the next 20 years the estimated statewide transportation costs are \$6.1 billion for unpaved roads, \$2.6 billion for paved roads, and \$498 million for bridges.

In response to a question from Representative Steiner, Mr. Horner said it is best to engage in regional planning, beyond county-level planning, to ensure transportation network efficiencies.

In response to a question from Representative Hatlestad, Mr. Horner said the average per-mile cost is \$2 million for cement, \$1.4 million for asphalt, and \$600,000 for gravel.

Senator Kreun said individuals have expressed interest in the 2021 Legislative Assembly discussing how to meet future transportation funding needs.

Chairman Dockter said the committee has received a fair amount of information relating to fuel tax and road needs to aid the Legislative Assembly in its discussion regarding how to close the funding gap for road needs.

Chairman Dockter 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 Dockter called on Ms. Thompson to present a memorandum entitled [\*Impact of Taxation on the Use of Vapor Products\*](#). Ms. Thompson reviewed the rate of vapor product use by high school students before and after certain states imposed a separate tax on vapor products. She said the rate of vapor product use by high school students following the imposition of tax increased in Kansas and Louisiana and decreased in California, the District of Columbia, North Carolina, Pennsylvania, and West Virginia.

Chairman Dockter called on Ms. Thompson to present a memorandum entitled [\*Distribution of Sin Tax Revenue\*](#). Ms. Thompson said the majority of revenue collected from alcohol, cigarette, tobacco, and gaming taxes is deposited in the general fund.

Chairman Dockter called on Ms. Thompson to present a memorandum entitled [\*Effectiveness of Sin Taxes in Deterring Behavior\*](#).

Senator Kreun said some businesses in California which are selling marijuana legally are going out of business because the tax imposed is too high.

Ms. Thompson said her research revealed one state actually collected less tax revenue after the tax on a certain product was substantially increased due to the resulting influx of black-market products.

### **FINAL MOTIONS**

**It was moved by Representative Steiner, seconded by Senator Kreun, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and to present the report to the Legislative Management.**

**It was moved by Senator Kreun, seconded by Representative Steiner, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Dockter adjourned the committee sine die at 12:50 p.m.

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Emily L. Thompson  
Code Revisor

ATTACH:8