

GRASS ROOTS REPORT



SPRING 2015

The Official Newsletter of the ND Township Officers Association

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NDTOA Legislative Report of the 64th Session

By Larry Syverson

Before we get into the report I want to give you the **new NDTOA office phone number: 701-430-1735**. That same number will also be used during future legislative sessions and the workshop tours. Previous office phone numbers are set to be discontinued on June 1, so please change your contact list now.

The 64th Session of the North Dakota Legislature is behind us. As usual, there were some good things, and some not so good things.

Seems everyone's first concern is funding, and the first bill out of the session was a funding bill, **SB 2103, the "Surge Bill"**. Most of you are aware that the surge paid \$10,000 to every township in the 43 counties that did not receive more than \$5M in oil tax revenues last year.

It also paid \$112M to those 43 non-oil counties for use on their road systems. The rest of the money went to the oil producing area; \$240M to the 10 oil counties for use on the county, township and tribal roads.

\$100M to the "non-hub" cities in the 10 oil-producing counties and \$172M to the "hub cities" in the oil producing area. \$450M to the ND DOT for highway projects in the oil-producing districts.

Almost all of these various funds went out the first week of March, except \$250M of the ND DOT funding will be at the end of the 13-15 biennium which is coming up in a couple of months. There were three other major bills that also deal with funding.

HB1012, The DOT budget. Sec. 8 has \$8M for non-oil townships that will be allocated at \$5,000 per township. The funds will go out in February of 2016. Would have liked this doubled, but even the DOT didn't get all they had put in for and came up short a couple of hundred million. We were worried for a while that we could lose the \$8M, but it stayed in, and the final version passed the House 90-4, and the Senate 47-0.

HB 1176, oil and gas gross production tax definitions and allocations – This bill started out as the answer to long term funding in the oil patch, but the slump in the oil market caused some substantial re-writing.

The House Appropriations Committee reduced the formula percentage that would go to local subdivisions and the percentage that would be directed to oil producing townships was reduced by a third.

The Senate got the formula increased some and got the township percentage restored to the 3% by miles in the county and 3% pooled with the townships in the 10 biggest oil producing counties, as it was from the previous session.

HB 1176 also included an appropriation of \$139M for Oil and Gas Impact Grants; \$5M of this fund will go to eligible political sub-divisions, counties, cities, organized townships and other taxing districts in the seven oil producing counties that received less than \$5M in gross production tax allocations from September 1, 2013 through August 31, 2014.

There is also \$6.8M of discretionary grants for needs as determined by the

Land Board. Following the conference committee recommendation the House passed the amended bill 91-1, and the Senate followed with passing it 46-1.

HB 1377, the "bucket bill", named because it is described as a stack of buckets that fill with money which will overflow into the next bucket when they reach a certain amount. This is the allocation formula for the state's share of the oil and gas tax.

After the stack of buckets fill with about \$722M, any further funds will go 70% to the strategic improvements and investments fund (SIIF) and 30% to the Political Subdivision Allocation Fund.

The PSAF is distributed to subdivisions in the oil producing counties, like the gross production tax distributions in 57-51-15.

The forecast indicates that the PSAF "bucket" will catch \$41M in the 16-17 biennium.

The oil industry got an amendment added to the "bucket bill" to restrict the local road authority's ability to impose "rig moving fees". Note Section 6, (which follows) includes all local authorities that control roads and limits the fees they can impose for using county roads; it would seem this was an oversight in that it doesn't list township roads. HB 1377 Passed the House 92-0, and the Senate 47-0.

HB 1377, SECTION 6. MORATORIUM ON ADDITIONAL FEES FOR USE OF COUNTY ROADS. For the period beginning June 1, 2015, through June 30, 2017, notwithstanding

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President's Comments



Hello everyone,

Looks like spring might be finally here after Mother Nature fooled us into thinking it would come on early this year but then gave us a little more colder temps and wintry precipitation mixes. Some areas are now in need of moisture if it could come in a sensible fashion and along with warm temps.

This being a legislative year, Larry Syverson has been busy as a beaver watching out for our interests in Bismarck during the session. Other board members and township officers have dropped in on occasion to "make sure he is doing his job." When I spent a little time there I told everyone I was being Larry's shadow!

Those of you who have been monitoring the legislative updates on the website or attending county association meetings know of some of the contentious issues he has been dealing with. Larry's detailed report(s) appear elsewhere in this issue.

I have attended several county association meetings over the winter but not as many as I would have liked. Timing and distance are usually the main obstacles for not being able to attend more meetings along with ND weather of course.

We are doing our best to have at least one board member at your county meetings, so if that has not been done in some cases I would like to know so we can remedy that in the future.

The South Dakota Association of Townships

is making arrangements to host the multi-state conference this summer. A few of our board members have expressed an interest in attending this conference so it looks like we will have a good representation again.

Some board members from other states that usually attend this conference are also members of the National Association of Towns and Townships board so it gives us a good opportunity to get updated on what's going on at that level and give our thoughts on the current issues they are dealing with. The drawback to this is that they keep pressuring us to rejoin NATAT.

I know this has been brought up a few times in the past but we keep noticing a major omission many townships are making. That is having a list of your regular township board meetings filed with the County Auditor. Setting a reasonable meeting schedule for the year and filing it with the County Auditor satisfies the notice requirements of the open meetings regulations.

Until next time, let's do our jobs diligently and keep our form of Grassroots Government alive and well.



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www.nd.gov/surplus

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the provisions of chapter 39-12, the board of county commissioners and other local authorities having control of roads may not impose any additional fees for the use of county roads, except the fees established in the North Dakota association of oil and gas producing counties' uniform county truck permit program, unless an operator, company, or individual requests and agrees to pay the additional fees.

However, the board of county commissioners and other local authorities may issue penalties to operators, companies, or individuals who violate posted road restrictions.

Bills Dealing with Tax Issues:

The Assessor Qualification Bill, SB 2054, was stopped in the House with a 42-49-3 vote. But then it got amended onto another tax bill, **HB 1059**, which was a bill to correct a tax inequity between investor-owned electrics and co-op RECs.

Other amendments to the bill included the homestead credit for the elderly and one that would allow a fire district to continue a levy to pay off a bond issue. Getting coupled with these other items made the assessor training amendment very hard to kill. The new version in the amendment would continue the two-tiered system with Class I and Class II assessors. Cities of more than 5,000 requiring Class I, which requires 180 hours of training but the requirement for Class II was dropped to 100 hours. The fewer hours also made the bill seem less brutal and it became even harder to kill.

The much amended HB 1059 passed the Senate and then went on to a conference committee. The House conferees didn't like having the assessor bill reintroduced in this manor but the Senate was insistent that the amendment stay in.

The conference committee was deadlocked 3-3, the House tried to get the hours cut to 50 but the Tax Department said they needed 80 hours to fit the available online courses so that is what they settled for.

The problem is the cost of the 80 hours of online courses is \$1,035. For a

township that levies 18 mills, it would take all the taxes raised from \$1,277,777 of residential property to pay for the training.

Many legislators were frustrated that they had to vote for the bill or be voting against property tax relief. Some did vote against the bill just to show their displeasure with the back door method used to push this once killed bill through. The final version passed the House 70-20, then the Senate 39-8.

As an assessor I have to say I am not at all happy with this new requirement, but I guess we brought this on ourselves. All will suffer for the sins of a few. There are stories going around of deliberate under-valuing, properties being omitted or wrongly classified, and the misuse of the farm home exemption.

Reports that in one southern county there are 82 residences given the farm home exemption that do not qualify. In another county a township assessor made all residences farm home exempt so he would not have to assess his own.

The minutes of one township equalization board recorded, "we gave him the good neighbor discount." The law does not provide any such discount and I was just astounded when I heard that testimony in the Senate Tax Committee.

The urban population is quick to assume that the rural is not paying equally and that means the urban has to pick up more of the school district and county tax bills. That is why some legislators seem to be after us. In a case like this, a red mark against one stains all of us.

HB1054, Agland Modifier Bill. Started out monitoring this bill because I had heard in the interim meetings that some of the modifiers were over used and actually doubled up on some factors. But as the session went on it became apparent that this bill might have caused more problems than it would solve.

It would be another one-size-fits-all solution. It would be much better to study the use of modifiers and maybe try some changes out in a few counties before doing it state-wide. Senate killed

it 21-26.

HB 1055, Mills to Cents per \$1000, a 133-page bill to remove a four letter word and replace it with a sentence. Those who don't understand mills wouldn't understand this either. It would have been a lot of money spent for no improvement. Passed the House 65-28, the Senate Tax Committee tried to work out some issues with the bill but when it went to a vote the Senate killed it 4-42.

HB 1057, Notice of Increased Assessment, requires that a property owner be notified if the total increase of assessment of his property exceeds \$3,000 and 10% over the last year's assessment, no matter who or what board made the increase.

The Senate amended the bill and the House refused to concur so it went to conference. There was an attempt by a House Conferee to amend the bill with caps on subdivision levies. If a subdivision raised their levy more than 10% one year, the next year they would be limited to a 3% maximum increase.

This might have become a problem for a township that had reduced their levy because of the large state funding, now with less money coming from the state they will need to increase their levy and could have run into these caps.

The Senate Conferees successfully resisted this amendment, the committee then gave the Senate passed version a favorable recommendation. The House finally accepted the Senate version.

SB 2144, Governor's Task Force on Property Tax. Shortened the list of levies available to townships; it eliminated several that had not been used in years. Does allow the normal 18 mills which can be expanded to 36 (excess levy) by a vote of the electors.

A five mill levy can be authorized by the voters for co-operation with the county for county highways within the township. The Excess Levy and Township Road Levy need to be reauthorized every five years. The amended bill passed the House 84-6, the Senate concurred with the amendments and passed it 47-0.

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The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings to All! What a pleasant surprise to have an early Spring, and it sure is refreshing to be done with Winter without a lot of work for the snowplows. And even better, the Legislature finally left town, so now we can get back to normal!

I have a few tax clients in my office and that season finished as well, so bring on Summer! Speaking of taxes, I've heard it said that "a person owes it to themselves to become successful and once successful, then they owe it to the IRS."

Townships should be alert to funding sources which the 2015 Legislature put in place. Check Larry's article elsewhere in this issue for his notes on the legislative activity we monitored this year.

During the course of the summer, I'm sure Larry and myself will begin the process of updating our handbooks to include changes and additions stemming from the actions of the 2015 Legislature. If there is something in the handbook that you would like to see added, or changed, let one of us know, so we can include it in the next edition.

The new updates will be available next year at our biennial workshops assuming we stay on the same schedule as in the past.

Annual meetings are behind us, and I had several calls relating to meeting procedures. It's always good to review Title 58 in our Century Code regarding our meetings, notices, voting, officers, etc.

Sometimes I think people get confused about the difference between meetings of the supervisors and meetings of the township. Even though the attendees at the annual March meeting are usually the same attendees that are at a supervisor's

meeting, remember that they are two distinct and separate bodies under the law. We had several townships that had actual election contests, many with close vote totals, so the scrutiny required to make sure only residents were casting ballots was especially important this year.

Equalization meetings have also come and gone and that process has begun which ends with the State Board of Equalization session which is usually held in August. Our April township equalization meetings are probably not the time to discuss regular township business, unless a special meeting notice has also been posted as well for that same day.

Consider having regular supervisor meetings this Summer—say once a month or so. Many townships have done so, and they report that it is a good way to keep up with paying bills on a more timely basis, and it helps with landowner/operator complaints.

In other words, you already have a monthly meeting scheduled which the complaining party can attend and air his concerns in front of all three supervisors, rather than tying up the lone supervisor's phone all night long. And, with a regular monthly schedule, a single notification to the County Auditor's office will suffice for the required notice of those meetings.

With the early planting season, townships should have time to perform a road sign inspection this spring. Watch for signs that have fallen down, or were knocked down by the snowplow, or the signs where the deer hid behind last fall (that's the only reason I can think of why signs get shot at—there must be a deer hiding behind it), as there is nothing more worthless than a sign that is no

longer serviceable.

Here's hoping everyone has a safe and productive summer. I see it is also 'wedding season' as I've received several invitations for those events from the neighbor "kids"! Can't believe they have already grown up and ready to get married. My advice to the newlyweds is always that 'Marriage is like operating a farm—you have to start all over again each morning!'

Following are some questions I've received in the office. TRM

Question: I noticed that the neighboring township had their annual meeting on the Monday night before the 3rd Tuesday in March. I thought we couldn't have our meetings on a different day?

Answer: Yes, I did see that there were some townships that advertised their annual meetings for different times—which is in violation of the law. The state Statute is pretty clear "... the electors of each township shall assemble annually on the 3rd Tuesday in March..." I do see most of the County newspapers around the State, and it seems like there always is a township or two that does this.

I worry that someday a landowner will lodge a complaint over their individual tax levy, or even the township's annual budget process, because the township didn't meet properly—and that complaint would probably win, forcing the township to go back into session again and re-do everything.

Question: We amended our budget at the equalization meeting in April as we forgot to include some items at the March meeting?

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Were our actions legal?

Answer: Probably not, because I'm guessing you didn't call for a special meeting of the township for that day. Yes, Equalization day is a good day for a meeting, as everyone is usually in attendance anyway, but it can only be used for tax equalization purposes, unless you also publish a notice of a special meeting.

Question: I'm a township resident and two of our supervisors are bickering and the third won't mediate and make a decision. Any advice?

Answer: See if you can convince the neutral supervisor that his responsibility is to cast the deciding vote on the issue. Maybe you and a few of the neighbors could be present at a supervisor meeting and provide at least moral support. This will be something to remember for next year's annual meeting when it comes to the elections.

Question: We've had an influx of people move into our township due to all the oil activity. We have decided that we should expand our Board to five supervisors so as to spread the responsibilities out. I think we can do this, and if so what is the proper procedure?

Answer: Check section 58-04-02.1 in your township officer's handbook. The annual meeting would have had to approve the change, and if that didn't happen, then a special meeting of the township will have to be scheduled to accomplish the new officer structure.

I see also that when going to five supervisors that a staggered term schedule should also be set up at the same time so that everyone's term doesn't expire in the same year. It's interesting to note that many of our townships are losing residents and should be thinking about combining with neighboring townships, and yet there are several townships out there like yours that are exhibiting rapid growth.

Question: We have trees in several of our road ditches which we would like to get removed this summer. How far from the road can we go? Some of the trees are part of existing farmsteads. And in another area, it's just a prairie trail, but the landowner there doesn't think it's necessary to remove those trees.

Answer: Assuming it is a section line, whether a prairie trail or a built up road, you have a four rod strip, or 66 feet—33 feet either side of the line. Be careful, as sometimes the center of the road is not necessarily the center of the imaginary section line. If the farmstead trees fall into the 33 feet, then yes, you could order their removal—a tough decision.

If the road is heavily used, maybe a speed limit would help alleviate some of the risk. As for the prairie trail, the same rules apply.

Removing those probably aren't such a high priority because there is little or no traffic, but a lot easier to remove them now, rather than waiting until they have grown larger and by that time the land changes hands and the township decides to upgrade the prairie trail to a better road.

Question: Can we zone our township so that wildlife easements could be outlawed?

Answer: Probably not, as a landowner has a right to make those agreement with the wildlife folks if he chooses. The township's only concern is how the wildlife area will affect the road system.

That is where you should provide input—in writing—to the US Fish and Wildlife Service (or ND Game and Fish as the case may be) regarding the township's rules about water flows under your roads; no water being allowed to stand or abut against roads; no water being allowed to overtop roads; etc.

And, coordinate with the county Water Board as well, as they have

jurisdiction over water flows within the county.

Question: Can a landowner who has moved to town still be a supervisor?

Answer: No—only township residents are allowed to be elected as officers!

ATTENTION TOWNSHIP OFFICERS AND COUNTY COMMISSIONERS

*North Dakota
Township Officers
Association
needs your help!*

Is your organized township or unorganized township that you are in charge of a member of NDTOA?

Benefits secured by efforts of NDTOA are received by all townships, organized or not, NDTOA members or not.

Please ensure the township you are responsible for is supporting our efforts and doing their share of "pulling the load".

Report *cont'd from page 3*

Bills dealing with other issues:

HB 1056, Rural Fire District Levy Bill. The House didn't like the Senate amendment that would allow the fire districts to increase their levy from 5 mills to 13 mills at an annual meeting in a similar manner done for township excess levies, so it went to conference. Nothing else seemed to work so they came up with a way to tighten up the annual meeting election rules.

Besides being advertised they have to keep the polls open for six hours and must certify the election within 10 days to the county auditor(s) and the Tax Commissioner. The final amended version passed the House 72-17, and the Senate 43-4.

HB 1193, investments for political subdivisions, to amend NDCC 21-06-07. Introduced by bankers, more options for investing funds in the treasury. Subdivisions may invest funds in certain securities. Passed the House 91-0, Senate 47-0.

HB 1194, subdivisions may borrow against future revenues. Revenues include uncollected taxes, yet to be received funds from state or federal sources. As an example, your township will be getting a \$5,000 payment from the state in February of 2016, if you need to do some work now, your township can borrow against that payment from a bank or credit union. Passed the House 86-6, Senate 44-2.

HB 1358, pipeline monitoring and safety bill. Amendments allow a pipeline operator 60 days after putting a line in service before they must provide a test certificate from an independent inspector. Other sections prohibit reclamation funding going to land or water intentionally damaged by the current or former owner.

The bill also provides for a study to determine the feasibility and cost effectiveness of requiring leak detection and monitoring technology on new and existing pipeline systems, and to determine the best techniques for remediating salt and any other contamination from the soil surrounding waste pits reclaimed by trenching. The Senate passed the amended bill 44-0, House concurred and passed it 91-1.

HB 1401, to exempt contractors from sales and use tax on items used for exempt organizations. Was amended into a study of making contractors working for exempt organizations exempt from the "use" tax. I told the committee that NDTOA is very committed to eliminating this drain on much needed transportation funding and will support the study and will prepare to get a bill introduced in the 65th session.

We will have to lobby the Legislative Management Committee to ensure this issue is actually picked as an interim study. Amended bill passed the House 93-0, Senate 46-0.

HB 1432, the environmental impact litigation fund. Bill was amended; it now sets up a "Federal environmental law impact review committee". The committee shall review federal environmental legislation and regulations that detrimentally impact or have the potential to detrimentally impact the state's agricultural, energy, or oil production sectors and confer with the attorney general with respect to participation in administrative or judicial processes pertaining to such legislation or regulations.

The bill set up a continuing appropriation for this committee of \$1.5M. The amended bill passed the Senate 33-14, the House concurred with the amendment and passed the bill 72-17.

SB 2195, Township Special Road Fund, Bill amends NDCC 57-15-19.2, to increase maximum allowable in fund from \$30,000 to \$100,000 and to allow snow removal as an expense from this fund. Passed the Senate 46-0, and then the House 82-8. Funds are put in the "special road fund" by a resolution at the annual meeting; those funds must be kept separate from all other funds.

Separate means in bookkeeping, not a separate bank account. These funds may only be used for road building or surfacing and now snow removal is included. (NDTOA 2014 resolutions: #1 and #4)

SB 2024, Restoration of township or city zoning authority previously relinquished to the county. If a town

ship gave up its zoning authority without a joint powers agreement, or never enacted its authority, and thus authority defaulted to the county.

An Attorney General's opinion said the county could not even give the authority back to the township if it wanted to. This bill provides for the restoration of zoning authority thru an agreement between the county and township. Passed the Senate 46-0-1, and the House 85-0-9.

HCR 3009, A resolution urging Congress to prevent new rules in "Clean Water Act" The resolution was amended and adopted by the legislature. (NDTOA 2014 resolution: #2)

HCR 3039, A concurrent resolution directing the Legislative Management to study the software needs for all political subdivisions in the state to make specified tax, budgetary, and other public information available online.

The resolution was amended and adopted by the legislature. The resolution says all subdivisions but where it calls for reports it specifies counties and cities. As such it does not require any more report filing for townships, but this bears watching.

Well, that is a quick look at some of the township affecting bills of the 64th session, if you have questions about these or other bills give me a call **701-430-1735** or send an email to: larry@ndtoa.com.

As always, thank you for your interest. Thank you for being Township Officers!



WORKING FOR YOU!



Treasurer's Report by Barb Knutson

District 5 Director, NDTOA Mail List

Is it Spring? One day it seems like it, the next day, not so much. Strange weather!

Just moving through the busiest time of the year for township officers with meetings, reporting and Legislature as well. I am happy to report that dues are coming in in a timely manner, for the most part.

However, I have been contacted by a few townships saying they did not get a bill, when I have them on record as having been billed.

If there was a change in officers,

this may be the cause or if it just got lost in the mail. I appreciate those letting me know of this situation.

In answering phone questions and traveling around my district, I am made aware of new officers, which is great to see and brings me to the next request that each township make sure all of your officers are on the list that is given to your County Auditor.

This makes it possible for us to get our mailing list updated in a timely way. Even if the officers have not changed, we need to know that also.

Also, make sure your annual reports are sent in to your auditors! The counties need this information and it will make more room on your desk.

The counties that have been paying for the unorganized townships in their county is increasing. Those townships get the same benefit as organized townships and it is nice to see that the counties are recognizing this.

Any county that has a township officers association, I would really appreciate your sharing a list of officers with me.

Thanks for all the work you do. It is important to our state.

Treasury Notes **SB2103 "Surge" Distributions to Townships** *By State Treasurer Kelly Schmidt*

As most of you are aware, in late February the Legislature passed Senate Bill 2103 (aka Surge Bill) which allocated \$10,000 to each township in the 43 counties that were not in the top 10 of oil and gas production for FY 2014. Our office distributed these funds on March 6th. Since then we have received numerous questions regarding how the specific township amounts were arrived at for those allocated more or less than the \$10,000.

When the Legislature allocated \$10,000 to each township, the intention was to allocate \$10,000 to each congressional township and range number (generally 6mi x 6mi square) regardless of organization or mileage. This leads to a number of scenarios in which a specific organized township could receive more or less than \$10,000.

One scenario occurs when the maintenance of the road miles in one township and range number is split between different organized townships (or the county in the case of unorganized townships). This gen-

erally happens along rivers or other bodies of water where geography makes it easier for one organized township to access the area even when it isn't technically in their specific township and range. When this occurs, the \$10,000 for that specific township and range number is split between the two organized townships based upon the number of township road miles that are maintained by each. This treatment would be the same if the township and range number was split between counties as well.

Another scenario occurs when an organized township encompasses more than one township and range number. In these scenarios, the organized township would be entitled to a portion of the \$10,000 allocated to each of those township and ranges and would therefore lead to that organized township receiving more than \$10,000.

A final scenario occurs along the State borders. Along the borders there are a number of "sliver" township and range numbers that are only

partially in North Dakota with the remainder in another state or country. In these situations, these "sliver" townships are eligible to receive the entire \$10,000 because the remainder of the township and range that is not in North Dakota is considered ineligible for the distribution. So, under these circumstances, if these partial township and ranges are maintained by an adjoining township, that adjoining township would be allocated that township and range's \$10,000 in addition to their own.

There are enough of these scenarios across the state that we requested an Attorney General's opinion as to the allocation of township amounts under these circumstances. The opinion we received confirmed the explanation above.

All of the township distributions are searchable on our website at www.nd.gov/treasurer. Please don't hesitate to call my office at 701-328-2643 with any questions.



Grass Roots Report

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NOTICE TO COUNTY COMMISSIONERS

If your county includes unorganized townships:

Is your county paying dues for each unorganized township?
The per mile funding each township gets is a result of NDTOA effort.
If your county doesn't pay dues, someone else is paying your freight!
Your county has benefited from NDTOA for many years.

**Have you calculated the benefit your county
has received from the efforts of NDTOA?**

WON'T YOU PLEASE PAY THE DUES?




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