Levying for the Future of County Roads

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The Future of Road Levies

The 2015 Legislature passed a monumental restructuring of local government levies and levy authority as Senate Bill 2144.

While SB2144 affects numerous county levies, all with the similar philosophy, this presentation focuses specifically on the dedicated county levies for road purposes.

It is VERY IMPORTANT to understand that this legislation DOES NOT affect current (and future) home rule counties where their charters specify the levies available to the county for road purposes. Home rule charters (if they address these levies) supersede the statutory levy structure and limitations.

The Future of Road Levies

With the passage of SB2144, which became effective on Jan. 1, 2016, there is essentially only one levy and one associated special road fund for the future, structured as follows:

- 10 mills – County commission discretion,
  - 100% for county roads
- 10 mills – Voter approved
  - Expires every 10 years requiring another vote
  - 20% of the tax generated by the value of **property located within a city** to be shared with each city in the county.
- 10 mills – Voter approved
  - Expires every 10 years requiring another vote
  - 100% for county roads – NO city share
- 30 mills Total

The Transition

Several protections were built into the legislation:

- The total number of mills authorized for road purposes prior to January 1, 2015, may continue to be levied for 10 years, unless a levy was set to expire before that, or until a subsequent vote is taken by the county citizens.
- An existing Farm-to-Market (Federal Aid) levy may be levied for up to 10 years under "the provisions of law at the time the levy was authorized", which has been interpreted to mean that this levy is NOT subject to the revenue sharing requirements placed on the "2nd 10 mills."

The Transition - Examples

EXAMPLE 1, If a county was levying last year as follows:

8.0 mills – County Road and Bridge – Levy #1204
6.0 mills – County Road – Levy #1233 *
11.0 mills – Farm-to-Market – Levy #1212 *
25.0 mills

This county could legally levy 25 mills, without a vote, for 10 years. The 11 mills would remain governed by the old Farm-to-Market provisions, and the remaining 14 mills would be governed by the provisions of NDCC 24-05-01. This would mean that the "first" 10 mills would be 100% county, but 4 mills would be subject to the city sharing provisions.

* These levies would have had voter approval prior to January 1, 2015

The Transition - Examples

EXAMPLE 2, If a county was levying last year as follows:

12.0 mills – County Road and Bridge – Levy #1204
5.0 mills – County Road – Levy #1233*
<u>18.0 mills</u> – Farm-to-Market – Levy #1212*
35.0 mills

This county could legally levy 35 mills without a vote for 10 years. 18 mills would remain governed by the old Farm-to-Market provisions, and the remaining 17 mills would be governed by the provisions of NDCC 24-05-01. This would mean that the "first" 10 mills would be 100% county, but 7 mills would be subject to the city sharing provisions.

* These levies would have had voter approval prior to January 1, 2015

The Transition - Examples

In Both Examples:

- After 10 years, a vote would be required to continue to levy in excess of 10 mills, and the county would have to specify in the ballot measure;
  - The additional levy amount (up to 20 mills), and
  - The term (up to 10 years).
- Also, after that time, the portion of the total county road levy that is more than 10 mills and up to 20 mills, would be governed by the city sharing provisions. Any levy in excess of 20 mills, up to the 30-mill cap, is 100% for county roads.

One Final Thought

Keeping track and planning for any desired “renewal vote” is of critical importance;

- The statute says existing and future levies over 10 mills may not exceed *“ten taxable years*“ without a vote.
- The law was "*effective for taxable years beginning after December 31, 2014*", so year one is taxable year 2015, making taxable year 2024 the tenth.
- Levying a tax in Tax Year 2024 provides county revenue from previously existing levies (without a vote) for their CY2025 budget year.
- A county would have to vote prior to levying taxes in Tax Year 2025 for their CY2026 budget if they want more than 10 mills for the future.
- As 2025 is NOT a regular election year, a county may wish to plan for a vote in 2024 to avoid a special election.

NDCC 24-05-01 As Enacted in the 2015 Legislative Session

24-05-01. County road system and construction plan - County road and bridge tax levy - Allocation and use of funds. The board of county commissioners of any county shall periodically prepare a proposed county construction program of roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction.

1. The board of county commissioners may levy a tax not exceeding a tax rate often mills per dollar of the taxable valuation of property in the county for the improvement of county roads and bridges.

2. When authorized by a majority of the qualified electors voting upon the question at a regular or special election in the county, the county commissioners may levy and collect an additional tax for county road and bridge purposes not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. The levy pursuant to such an election may be discontinued by the board of county commissioners or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote to discontinue the levy of a majority of the qualified electors voting, such levy must be discontinued.

Of the proceeds of the tax collected under levy authority under this subsection on account of property situated within any city, by the county treasurer of the county in which the city is located, twenty percent must be turned over by the treasurer to the auditor of the city, in the manner provided in section 11-13-06 to be expended under the direction of the governing body of the city in the improvement of its streets and highways.

3. When a county requires levy authority for county road and bridge purposes in excess of the limitations under subsections 1 and 2 and the county is authorized by a majority of the qualified electors voting upon the question at a regular or special election in the county, the board of county commissioners may levy and collect an additional tax not exceeding a tax rate of ten mills per dollar of the taxable valuation of property in the county. The levy pursuant to an election under this subsection may be discontinued by the board of county commissioners or, upon petition of five percent of the qualified electors of such county, the question of discontinuance of the levy must be submitted to the qualified electors of the county at any regular or special election and, upon a favorable vote to discontinue the levy of a majority of the qualified electors voting, such levy must be discontinued.

4. Additional levy authority authorized by electors of a county under this section or section 57-15-06.3 before January 1, 2015, remains in effect under the provisions of law at the time the levy was authorized for the time period authorized by the electors but not exceeding ten taxable years, unless discontinued earlier by the board of county commissioners or the electors of the county. After January 1, 2015, approval or reauthorization by electors of increased levy authority under this section may not be effective for more than ten taxable years.

5. The county treasurer shall retain and deposit in a fund known as the county road and bridge fund the county share of the tax under this section and any proceeds of this tax totaling less than twenty dollars in a taxable year which is collected on account of property situated within any city. Proceeds of the county share of the tax under this section must be expended in the improvement of highways as provided in this chapter under the direction of the board of county commissioners. The provisions of this section in regard to allocation apply to the proceeds of any tax originally levied for other purposes if appropriated or transferred to the county road and bridge fund or for expenditure for road and bridge purposes. No allocation pursuant to this section may include the proceeds received by the county as its share of the allocation made pursuant to section 54-27-19, nor may any allocation under this section include moneys received from the state as the result of any other intergovernmental transfer.

Any unobligated balance in the county special road fund and reserve road and bridge fund on August 1, 2015, must be transferred to the county road and bridge fund and the county special road fund and reserve road and bridge fund must be closed out.