

2011 SENATE FINANCE AND TAXATION

SB 2320

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
2/1/2011
Job Number 13806

☐ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

One Attachment

Chairman Cook opened the hearing on SB 2320.

Senator Nodland – I'm here to introduce SB 2320 relating to a reduction of tax for the financial institutions on North Dakota from 7% to 5%.

Senator Triplett – This bill appears to have a fiscal note on it of \$8.5 million. Can you tell us why it's good for the state of North Dakota to give up that money?

Senator Nodland – I'm going to defer that question to the people behind me.

Senator Triplett – So you don't know.

Senator Nodland – I don't want to get in to the battle of the financial industry but there are different components in the industry besides your state. State of National Banks pay taxes in lieu of income tax to the state of North Dakota. Sometimes the banking industry, in my 25 years, felt it was an unfair advantage to that industry vs. the industry I was with and I think you will hear more testimony to that.

Vice Chairman Miller – You brought a bill to the floor that dealt with originating bank mortgages through the Bank of North Dakota. What was your reasoning for that?

Senator Nodland – The purpose of that bill was that the regulations that are being imposed by the new federal regulations due to the things that have happened in the national scene in the financial industry has caused the smaller North Dakota state banks to not be able to financially be able to put themselves in the position to do mortgage loans, individual mortgage loans, because of all the regulation that was causing that. So then the next alternative was to work with the Bank of North Dakota and the Bank of North Dakota would do those loans, originate those loans, but the smaller banks would refer customers to them so they could still provide that service to their people in the rural communities. Most of these were small rural community banks.

Vice Chairman Miller – Would you consider this bill a companion to that effort to making the banks more solvent in that fact?

Senator Nodland – I don't think so.

Rick Clayburgh, North Dakota Bankers Association – We are here today in support of SB 2320. I would like to thank Senator Nodland and the other sponsors for introducing this legislation at our request. SB 2320 is simply in many terms. It looks a little complex when you see some striking of various statutes, but what the bill does is reduces the state tax, the financial institution tax on banks of financial institutions in North Dakota from 7% to 5%. Currently the financial institution tax is divided up 2/7 of the tax goes to the state general fund and 5/7 of it goes to the cities and counties through the financial institutions tax distribution fund. SB 2320 eliminates, in essence, the 2/7 share of the state and reduces the rate to 5%, holds the cities and counties harmless, so there is no fiscal impact to the cities and counties. As Senator Triplett pointed out there is an \$8.5 million fiscal note. That is based on the revenue projection, revenue forecast for the coming biennium. The financial institution tax is its own separate line on the OMB's revenue forecast report that goes out so it's easy to determine what that state general fund impact is. A couple of reasons, and if we just look back very quickly, you might wonder why banks in North Dakota pay a separate tax from any other entity. If you think about the banking industry, we've been in existence since before statehood. In fact, the North Dakota Bankers Association is actually older than the state of North Dakota.

Rick Clayburgh went on to explain the history of how the North Dakota Bankers Association came to be and what the taxes were, how there were established, and why they are what they are now.

Chairman Cook – The biggest question I have with this bill that raised a red flag with me is, all of the money goes to the counties now that was raised from the bank tax, financial institution tax correct?

Rick Clayburgh, North Dakota Bankers Association – Under this bill it would, only the cities and counties would receive...

Chairman Cook – Only the cities and counties. How is that distributed? Will you refresh us?

Rick Clayburgh, North Dakota Bankers Association – It was based upon activity that banks were involved in back in 1986-87. It's a formula that's been placed in to the statute, but it was based on the economic activity of banks within counties back in that period of time. Statutory formula, the money goes to the tax department, the tax department administers an oversight of the return, the dollars go to the treasurer's office and those are distributed then to the cities and counties.

Chairman Cook – Based on the formula, based on population back then, or bank business back then?

Rick Clayburgh, North Dakota Bankers Association – There are representatives from the tax department that could probably better describe that, but I believe it was based upon banks presence within a county back at that time.

Chairman Cook – As former Tax Commissioner, how much time did the tax department spend auditing banks to make sure everything was correct?

Rick Clayburgh, North Dakota Bankers Association – It's an unusual tax and I can tell you as Tax Commissioner at the time, it was the infancy of the new structure of the tax and we had about roughly 90-100 banks that were filing a return. The tax department at the time, we had to create a disc specifically for the return, totally different than any other tax payer, corporate tax or any other tax. It's a unique tax and there are some complexities to it. The idea that the state would be giving up the state share of this, we are not suggesting that the state not receive compensation for administering the tax, but much like you administer the local option tax, city sales tax, by contract you could in agreement, you could receive benefit back from the cities and counties for administering it, or if that is a concern to the legislature, certainly reduction of the tax, something below 7% and above 5%, but to address the financial needs of the tax department to administer the tax, we are certainly supportive and appreciative of that concern.

Chairman Cook – My concern is the county is going to get all the money, the state is going to do all the work.

Rick Clayburgh, North Dakota Bankers Association – From the standpoint of the North Dakota Bankers Association we don't have any objection to that. One of the reasons we put this forward is that we wanted to be part of the discussion in what was happening with tax relief and we do truly believe that relief back to our banks will help the communities as they are able to continue and expand their business and their ability to service their communities.

Senator Triplett – You said as part of your testimony that our banks in North Dakota have been impacted significantly by federal regulations but you didn't make any effort to quantify that. Do you have any ability to quantify monetarily how you believe how the banks have been negatively impacted?

Rick Clayburgh, North Dakota Bankers Association – I don't have the revenues in front of me, but that is a very good area to begin with. Originally the financial institution tax over the past year and a half has taken a fairly significant hit. As banks, it had to write down loan loss reserves, additional costs of dealing with the regulators, but all of that has impacted the state already. If you just look at what you've seen with the financial institution tax collection at the state level, it's dropped fairly significantly in the last year and a half, two years.

Senator Triplett – Would you expect that to continue at a lower rate or was that like a onetime hit as people adjusted to the regulations?

Rick Clayburgh, North Dakota Bankers Association – In working with OMB we believe it's going to be extended out for a time. We are probably looking, in my opinion, based on the national information I have seen, probably 3-5 years for any significant stabilizing within the financial services arena in the nation and somewhat here in North Dakota although we have been somewhat insulated because of where we are and the practices of our business leaders in the state.

Senator Triplett – Another one of your comments were that you were looking for equity with the credit unions but again you didn't make any effort to quantify that. Does this do it

for you? If this reduction were passed would you feel you have achieved equity with the credit unions or is this part of a, one step in a large process?

Rick Clayburgh, North Dakota Bankers Association – No, and that's not our intent to try to level that playing field fully. They are a different model at times, but the credit union industry and farm credit, their models have changed also over the time and have become more bank like. At the same time, from our standpoint, we can compete against anyone, as banks. The credit union has a totally different tax formula, very minimal limited taxes. Our banks pay on average 30-40% tax. If you look at farm credit adjusted, they have about a 6-7% depending on the year on what they are dealing nationally. When they are out competing with us on loan rates and other areas it makes it more difficult. This reduction is but a drop in the bucket. We are not talking about going past this; we are not asking to be a non taxpaying entity in the state. We are just looking for similar consideration that other business entities are receiving.

Senator Triplett – You talked about if we dropped this tax that the money would circulate in the local communities and the communities would benefit. I'm wondering what guarantee can you provide us that the communities would benefit as opposed to banks would just have higher profit margins.

Rick Clayburgh, North Dakota Bankers Association – I don't know that I can stand here and say, and sign a pledge in what will happen. I just know how the business model of our banks work and what they do to their communities. They have a certain level of profit that they must hold to ensure they can cover loan loss reserves and other risks that banks take in the business that they are in of lending money. Overall, you reduce those burdens and that allows the bank to put more of those assets into their lending and banking portfolio for that business. I can't say 100 banks are going to do this. I can just tell you that's how our banks work. A majority of our banks, we have both national and state charter banks in the state. We have some national players, we have a lot of local players, and they are very close and very focused on their community, very family orientated industry.

Senator Triplett – I agree with Chairman Cook's statement about deserving kudos for not getting in the subprime market and keeping us out of the housing bubble, I think the conservative nature of North Dakota bankers did us proud in that sense, but at some level it almost feels to me like the banking community in this state has been too conservative in terms of reacting to everything that's going on in the western part of the state with the oil development and not getting on board soon enough to realize that this was a long-term situation and I've had some conversations with bankers in the last few months in preparation for this session and trying to figure out for myself what isn't going right in western North Dakota that we have such housing shortages out there and that things are not happening fast enough. I've heard some stories about banks who are still not perceiving the oil play as being sufficiently long-term to allow them to feel a comfort level with doing traditional mortgages and so talking about demanding full pay back within 7 years for example in order to build an apartment house which is driving rent up horrifically out there. So I am concerned about banks getting the dollars out in to the communities and circulating, and getting loans out there so that we can solve this housing crisis. It seems to me that the market ought to be able to solve this problem and banks are a big part of that and yet it's painfully slow to watch as we have people living in man camps and living in tents and trying to live in RV's over the winter time without adequate housing. I know that's not really a question, it's just a concern. Can you react to that?

Rick Clayburgh, North Dakota Bankers Association – You've got a very valid concern and our bankers have the same concern. First off, on the issue of slow to react, I wouldn't put it in those terms. I do know there are a lot of people, and not just the banking community but business community as a whole looking at, is this 1980's in return as far as where the oil industry is going. It's one of the reasons at our bank management conference last week we invited Harold Hamm to come in and he spoke to our bankers about the long-term impact and what this really means. More so, from the standpoint, especially if you are looking at the mortgage side, whether it's residential 1 to 4 or you are getting more on the commercial when you start getting larger complexes, the underwriting standards are just horrific. What's coming out of Washington now, and the underwriting that our banks have to ensure that their risk is covered and it's a reaction to what happened with the bubbles in AZ and CA, and because of that the regulators are coming in and are being just horrific to our lenders and writing them up. None of our banks want to have their examiners down on them. We have about 6 to 8 banks now in western North Dakota that have stopped residential mortgage lending because they can't afford to be written up, they can't afford to continue to hire people to deal with the regulatory changes that have come out of Washington to deal with traditional conventional mortgage lending. It's one of the reasons, and Senator Miller asked about the Bank of North Dakota legislation, it's one of the reasons we supported it too, is to help free up lending in those areas to try to answer these problems. Part of the problem that we are seeing, because of the kickback from Washington, it is much harder now, a bank must, by regulatory oversight, look at the global ability of the borrower, not just the particular project. Our bankers are there, they want to lend, they want to support their communities, but they also have to do it within the rules and regulations that are put on them by their examiners and their federal regulators. We are a highly regulated industry and so we have to deal within those parameters.

Chairman Cook – I can tell you I've had Senator Triplett's same concern. I've talked with bankers and I got that answer.

Senator Hogue – Could you talk a little bit about what I'll call the non-traditional sources of revenue that the institutions have? I would be interested mostly in your insurance services, trust services, maybe some have investments, passive income from tenants. Does all of that income generally go into the financial institutions revenue and their tax return so that revenue is taxed or do they generally have separate organizations for their insurance, or trusts, etc?

Rick Clayburgh, North Dakota Bankers Association – I've not filled out a financial institution tax form, or return. I'm not an expert in that area. I'm sure someone from the tax department might have the answer.

Don Forsberg, Independent Community Banks of North Dakota – We are here to testify in support of this bill. I'm sure Rick covered just about everything. I did hand out a chart (attachment A) that I just downloaded from the FDIC. It is the number of institutions, branches, and total offices for the commercial banks in the state of North Dakota. It goes back to 1966, that's the oldest it would go back to; I just wanted you to see the number of institutions that were in North Dakota.

Senator Burckhard – I see the number of branches is way up. How does that figure compare to institutions?

Don Forsberg, Independent Community Banks of North Dakota – I believe it relates to the population shift in North Dakota more than anything else. As more people move into the bigger cities, the banks are following.

Senator Triplett – You suggested maybe there is some problem with fewer banks but more branches. Maybe as the regulations get more intense maybe we actually need fewer institutions with even more branches for the administrative convenience of consolidating those regulatory functions. Maybe we still have too many banks for the current situation. Is that a possibility?

Don Forsberg, Independent Community Banks of North Dakota – That is one of our biggest concerns. When you end up with fewer institutions, but more locations, what you've really got is fewer choices. You've got fewer institutions saying here are our products and here are our services, and our decisions are going to be made in, wherever our main location is because that's how all organizations operate. From our standpoint, we are concerned with the lack of charters. It isn't the number of locations so much because we are talking choice. We have no problem competing as long as the playing field is level.

Chairman Cook asked for testimony opposed to SB 2320. No one came forward.

Chairman Cook asked for neutral testimony to SB 2320. No one came forward.

Chairman Cook called Rick Clayburgh forward.

Chairman Cook – As I have listened to this and even as I looked at this bill before we got here, there is a real big picture that this bill is just a little part of and I think all the issues in this big picture have come up here. We have talked about regulation, competitive nature and the fair tax treatment, the administration, the distribution of money to the counties and cities that were put in place back in 1986, it leads me to all kinds of questions as to whether or not that is really sound policy that should still be justified today. We are in another century now and no matter what we do with this bill, in my mind, I see a need that there be a study done here. A study on the big picture of the banking industry from the regulations to the tax policy to the distribution of where this money goes. Would you have any objections to that?

Rick Clayburgh, North Dakota Bankers Association – No, I would not. I don't think our members would. To clarify one thing, maybe I miss heard you, but the distribution to the counties and cities, to my understanding has been occurring for a long period of time.

Chairman Cook – I know that, we are talking about a formula that was put in place in 1986.

Rick Clayburgh, North Dakota Bankers Association – Correct. But looking at the study as we have looked at this as an association, without legislative committee and reaching out to our tax preparer community that works with our banks, they understand the complexities, they understand the issues that are faced on this. There has been talk about, should there be a financial institution tax or should be rolled in to the corporate tax. Any time you change tax, there are winners and losers and somebody will be opposed. In doing that there is the issue of the cities and counties and again some of our banks like the fact that they can say their support is close to their people. Looking at the whole financial institution tax if the legislature wants to study that and look at that, we will be here to answer any questions

during that period of time. We'd hope that in this process if there is going to be some kind of business tax relief that we are not left on the side because of the study. For the most part we have been left on the side because we are a separate section of code.

Donnita Wald, Tax Department – The tax department is neutral on this bill. We do want to point out a couple of things to the committee with respect to the taxation of the financial institutions. Before I start, there were a couple of questions that I want to answer. One of those related to the distribution of the tax. Prior to 1997 the bank tax was distributed to the counties based on the location of the bank within that county. How that worked was, the banks would file the returns with the tax department, we would certify to the county how much they were supposed to collect from the bank, and the county went out and collected the tax themselves. We just were the administrative arm of that. It was very simple tax back then. In 1997 when there was a complete rewrite of bank tax laws, what they decided to do for distribution purposes was, they took the 1991-96 tax distribution to each county, created a formula for that and now they have a set percentage of what they get out of the total revenues. The other question that I'll address right way was in respect to the non-traditional sources of income. Those are treated in a manner that depends on who and what kind of institution you are talking about. If you are a financial institution, those types of income, those intangible sources of income, are taxable. If you are non-financial, we cannot tax intangible sources of income. It's also become an issue for us because financials are really becoming a service industry. Some banks hold those service branches in separate entities and will file under the corporate income tax laws, some will file as financial institutions as part of the unitary bank, so it depends, there is no clear cut answer. This has become a very complex tax to administer. In 1997 they adopted the 3 factor formula that was created by the Multi-State Tax Commission and like the other 3 factor formula it consists of property, receipts, and payroll. We have spent a lot of time and a lot of energy, auditing and defending the states position on that. Banks are becoming more and more complex, they have different types of loans they are making. I understand there's some financial regulation that they must follow, but that's not necessarily what they need to do for tax purposes. One of the other more complex areas is the receipts factor and that relates to the income from services. How we assign those depends on where the greater cost of performance is. Let's talk about interstate banking. Where is the greater cost of performance there? Where do you assign that interest income for that loan that you went online, you applied for, was approved, you applied for the loan here, but it was approved at the home office in another state based on some computer program that was developed by their IT people, and it happens like that. So where is the greater cost of performance? In that case, in another state, that's out of state, not North Dakota, so those receipts wouldn't be assigned here even though you are the one that is going to be paying interest on that loan. We just wanted to make the committee aware of that. Again we are neutral on the bill.

Mary Loftsgard, Tax Department – We have had over the years one auditor who's primarily been assigned to do the administrative part of financial institutions tax which is basically getting in the returns, getting them processed, collecting the payments, issuing the refunds, etc is what I'm talking about with administration. I would guess that's almost a half time position. We have one half time audit position that just is taken up with administration, however, audit is another matter. Our audits are generally done by a lead auditor but that person generally has an assist auditor who works with them, we go out in the field usually 2 weeks at a time and audit can take months. It is more complex with banks because you are dealing not with just tangible personal property. In the property

factor you are dealing with intangibles and that became part of the model regulation the MTC developed that we then adopted. That is the statute we have now. The financial institutions logic being that so much of their assets are intangibles. It's their account receivable and things like that, that they're not getting representation for under the standard 3 factor formula that you have in corporations. So when you get to a bank audit you have a lot more to look at and having worked in the income tax area since 1989 I can tell you I still do not understand where banks put things for federal regulatory purposes and then how they mush that together to get what they need to report for tax regulation. It's very complex. I will also tell you in our experience particularly with multi-state, multi-national banks, nobody seems to do it the same way. There is a lot of expertise that we need. We spend a great deal of time on these audits.

Senator Dotzenrod – When you read the current law that imposes the tax, it's just 2 sentences there and it looks really straightforward, really simple. Tax is based upon and measured by the taxable income of the financial institution for the calendar year, and the second sentence is, the rate of the tax is 7% of taxable income but the amount of tax may not be less than \$50. So that all sounds really pretty simple, straightforward, but it looks like from what you're saying when you get in to trying to measure taxable income, it gets real complicated. I was looking at these distributions and to counties and to the general fund now that should be 5/7 and 2/7 in those columns. You can see as you follow down, there are some years the distribution to the counties goes up in the same year that the distribution to the general fund goes down. Evidentially these dollars and tax collections are coming at different times. These are collected maybe quarterly, not just once a year. Or the taxes are computed with different due dates. Because it sure looks like these dollar amounts are not accumulating to the county and to the state at the same time.

Donnita Wald, Tax Department – I think what part of that is, is that you might have refund or audits and those are reported in the year we collect or refund the dollars so it's not necessarily what was reflected in the return for that tax year.

Chairman Cook closed the hearing on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
2/8/2011
Job Number 14218

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Committee Work

Chairman Cook opened the discussion for SB 2320.

Vice Chairman Miller – There are 2 different amendments, the first one being a legislative management study to study the feasibility and desirability of converting the financial institution tax to a corporate income tax or something of that nature. I thought that might be a better way to tax than the way we do so right now. The second amendment would cut the tax going from 7% to 5% to 6.5% so that would leave some money in the state coffers but give the banks a small tax cut.

Chairman Cook – We have before us SB 2320, we have 2 sets of amendments before us. I want to deal with the tax rate first.

Vice Chairman Miller – I would offer the amendments to replace 7% on page 1 line 11 with six and one half.

Seconded by **Senator Burckhard**.

Chairman Cook – Committee discussion?

Vice Chairman Miller – I think that the amendment still offers some tax relief to the banks and this keeps the money flowing into the state coffers which would pay for the administration of the distribution and it's something to consider. Banks do a lot of good for our local communities and I think this is something that helps them out.

Senator Dotzenrod – We really don't know how banks are taxed in North Dakota relative to the states around us. We found in the committee hearing that it's basically apples and oranges. You can't really make an, around the states comparison.

Chairman Cook – That is the purpose of the second amendment for the study so that we certainly do get our arms around the financial institutions tax and I would hope that we would look at the corporate tax liability that they must confront with the administrative burdens of both the corporate tax and our institutions tax and finally look at what other states are doing.

Senator Hogue – Do you recall the percentage decrease that we gave for corporate income tax last session?

Vice Chairman Miller gave a brief description of what he thought the numbers were.

Senator Hogue – I'm thinking if we lower financial institutions, and then we decide to study it and we only lowered corporate by 3% or 4%, the financial institutions might decide that they want to remain to be taxed as financial institutions rather than becoming corporate, so I was curious about the percentages.

Chairman Cook – We have before us the amendment 7% to 6.5%. Ask the clerk to take the roll. (5-1-1)

Vice Chairman Miller – I will move amendment 11.0767.01001 to place a legislative study on the feasibility of changing financial institutions tax to corporate tax.

Seconded by **Senator Hogue**.

Chairman Cook – Any discussion? All in favor say yea. Opposed? (6-1-0)

Vice Chairman Miller – I'll move a Do Pass as Amended and rerefer to Appropriations.

Seconded by **Senator Burckhard**.

Senator Oehlke – I'll just point out that this \$2,125,000 fiscal note goes back to counties based on the percentage of banking in their area so there's going to be a real small percentage of the big banks that get the disproportionate share of this.

Chairman Cook – I believe what we are reducing is the amount that is state share.

Chairman Cook – We need to remove this overstrike don't we? On line 16 page one.

John Walstad and Donnita Wald spent some time discussing the percentages and how to calculate appropriately.

John Walstad said he would have the amendment ready first thing in the morning.

Chairman Cook closed discussion on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320

2/9/2011

Job Number 14247

☐ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2320.

Chairman Cook – From what I understand this does exactly what we wanted it to do. The percentage does hold counties harmless. They actually might get a few thousand dollars more. What we are doing basically is dropping the tax from 7% to 6.5%.

Chairman Cook asked if everyone is still comfortable with the amendments and the way they voted.

Carried by **Vice Chairman Miller**.

FISCAL NOTE

Requested by Legislative Council
03/24/2011

Amendment to: Reengrossed
SB 2320

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$2,125,000)			
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Re-engrossed SB 2320 with House Amendments reduces the tax rate for financial institutions from 7% to 6.5% of taxable income.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, re-engrossed SB 2320 with House Amendments is expected to reduce state general fund revenues by an estimated \$2.125 million in the 2011-13 biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/25/2011

FISCAL NOTE
Requested by Legislative Council
02/11/2011

Amendment to: SB 2320

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$2,125,000)			
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2320 reduces the income tax rate for financial institutions relative to the allocation to the state general fund, from 2% to 1.5% of taxable income. The allocation to counties does not change.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, Engrossed SB 2320 is expected to reduce state general fund revenues by an estimated \$2.125 million in the 2011-13 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/12/2011

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2320

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$8,500,000)			
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2320 reduces the tax rate for financial institutions and eliminates the allocation to the state general fund.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2320 reduces the financial institutions tax rate from seven to five percent. Sections 2 and 3 eliminate the two percent allocation to the state general fund.

If enacted, SB 2320 is expected to reduce state general fund revenues by an estimated \$8.5 million in the 2011-13 biennium.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
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Phone Number: 328-3402

Date Prepared: 01/31/2011

Date: 2-8-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 5 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Verbal vote

First amendment to lower the percent to 6.5%.

73
2-9-11
1053

PROPOSED AMENDMENTS TO SENATE BILL NO. 2320

Page 1, line 1, after the first comma insert "57-35.3-05,"

Page 1, line 3, replace "elimination" with "adjustment"

Page 1, line 3, remove "to the state general fund"

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 11, replace "five" with "six and one-half"

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~ four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~ four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its

educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.

- d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.
- 2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
 - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
 - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
- 3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less."

Page 1, line 16, after "~~Two-sevenths~~" insert "Three-thirteenths"

Page 1, line 16, remove the overstrike over "~~of the tax before credits allowed under section 57-35.3-05, less the credit~~"

Page 1, remove the overstrike over lines 17 and 18

Page 1, line 19, remove the overstrike over "~~time for filing the return granted under section 57-35.3-06.~~"

3057

Page 1, line 19, after "~~Five-sevenths~~" insert "Ten-thirteenths"

Page 1, line 19, remove the overstrike over "~~of the~~"

Page 1, line 19, remove "The"

Page 2, line 4, remove the overstrike over "~~payable in the year the return is due~~"

Page 2, remove the overstrike over line 5

Page 2, line 6, remove the overstrike over "~~year after the return is due~~"

Page 2, line 6, remove "collected under this chapter"

Page 2, line 8, remove the overstrike over "~~attributable to each portion of the tax~~"

Page 2, line 8, remove the overstrike over "~~appropriate~~"

Page 2, line 8, remove "financial institution"

Page 2, line 9, remove "tax distribution"

Page 2, after line 9, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - FINANCIAL INSTITUTIONS TAXATION. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of revision of the financial institutions taxes, including the feasibility of taxing financial institutions under the state corporate income tax laws. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 2-8-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Verbal vote

Second amendment for the study

Date: 2-8-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod		X
Joe Miller – Vice Chairman	X		Connie Triplett		
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2320: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2320 was placed on the Sixth order on the calendar.

Page 1, line 1, after the first comma insert "57-35.3-05,"

Page 1, line 3, replace "elimination" with "adjustment"

Page 1, line 3, remove "to the state general fund"

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 11, replace "five" with "six and one-half"

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

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1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.
- d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution

and election are made not later than the time prescribed for filing the return for the taxable year.

2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
 - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
 - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven tenths~~four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less."

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Page 1, line 16, remove the overstrike over "~~of the tax before credits allowed under section 57-35.3-05, less the credit~~"

Page 1, remove the overstrike over lines 17 and 18

Page 1, line 19, remove the overstrike over "~~time for filing the return granted under section 57-35.3-06.~~"

Page 1, line 19, after "~~Five-sevenths~~" insert "Ten-thirteenths"

Page 1, line 19, remove the overstrike over "~~of the~~"

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Page 2, line 4, remove the overstrike over "~~payable in the year the return is due~~"

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Page 2, line 8, remove the overstrike over "appropriate"

Page 2, line 8, remove "financial institution"

Page 2, line 9, remove "tax distribution"

Page 2, after line 9, insert:

"SECTION 5. LEGISLATIVE MANAGEMENT STUDY - FINANCIAL INSTITUTIONS TAXATION. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of revision of the financial institutions taxes, including the feasibility of taxing financial institutions under the state corporate income tax laws. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 SENATE APPROPRIATIONS

SB 2320

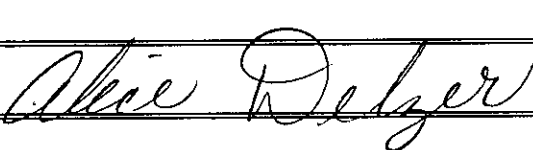
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2320
02-14-2011
Job 14509

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to reduction of the rate of the financial institutions tax and adjustment for the allocation of the tax

Minutes:

"No attached Testimony"

Chairman Holmberg called the committee to order on Monday, February 14, 2011 in reference to SB 2320. Joe Morrisette, OMB and Sheila M. Sandness, Legislative Council were present.

Rick Clayburgh, President and CEO of ND Bankers Association. Testified in favor of SB 2320. It is a simple bill, in one respect. It reduces the financial institution tax in ND from 7% to 6.5%. It also adds a study resolution, to look at the bank tax in ND, to make a determination if the financial institution tax, serves the taxpayers and state of ND or should it be a consideration of converting the banks from a bank tax to the corporate income tax system. The original bill was purely a reduction in the state bank tax from 7% to 5%. The bill holds the counties harmless, and only reduces in current form and original form, and reduces the state share. In this particular case, of a half percent reduction, reduces the state general fund revenue collection by \$2.125 million dollars. The reason we brought this bill forward and Senator Nodland sponsored this bill, about tax relief, in both individual and corporate income taxes. One of the significant reasons for the legislation is the amount of pressure our banks in the state are facing, and that they were not involved in the problems, that led to the financial meltdown in this country. The tremendous pressure that has been put on our banks, their reduction in income that is passing through to the general fund is down. It is primarily, the net income of our financial institutions in the state, have been hit the hardest by the regulatory issues and also the economic downturn that impacted the country and participation loans that many of our institutions are involved in. We feel it would be a great signal to our banks in the state, that not only do we appreciate you, as a good corporate citizen of ND, but if there is going to be corporate income tax relief, that banks, be considered part of that as well. We urge the passing of SB 2320.

Chairman Holmberg states to committee members that there is a first engrossment on the current fiscal note dated 2-11. We will have subcommittee for that consisting of Senator Wardner, Senator Grindberg and Senator O'Connell.

Senator O'Connell states that on the 26th of January, it was anticipated at a \$8.5 million decrease. Now the last meeting on February 11th, maybe it is for OMB, and suggested the decrease is \$2.125 million.

Rick Clayburgh states that the original bill reduced the rate, from 7% to 5%. By eliminating the state share, so it would eliminate the amount the state general fund received. That impact, would be an \$8.5 million dollar impact based on the current revenue forecast, including the revenue forecast, that is revised today. They have already reduced the rate from 7% to 5%, they are reducing it from 7% to 6.5%. That was the Senate Finance and Tax Committee. That fiscal impact, instead of \$8.5 is only 2.125 million. The way the bill is written is that the cities and counties are held harmless and they will continue to receive about \$18-20 million dollars, annually.

Senator Robinson asks if this bill is approved at 6.5 %, where will that put us in comparison to our neighboring states?

Rick Clayburgh states that is a very difficult question. The surrounding states have a slightly different tax system. SD has a financial institution tax. Their current rate is lower than our current rate. They are at 6%.

Senator Robinson states if the legislature decides against corporate income tax, this session and it is being promoted on the House side, would you still support the Bill?

Rick Clayburgh states that we support the study resolution in the bill as well. I think \$2.125 makes up for what we have missed in the past 10 years.

Don Forsberg, Executive Vice President of Independent Community Banks of ND. Testified in favor of SB 2320. We ask for a Do Pass.

Senator O'Connell welcomed the students from Bottineau and stated one is a niece of Senator Krebsbach.

Chairman Holmberg states that the subcommittee won't be meeting until the end of this week.

Chairman Holmberg closes the hearing on SB 2320.

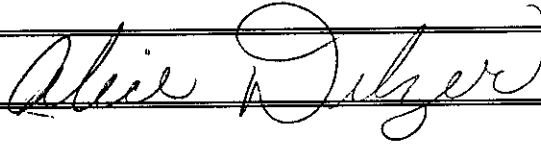
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2320
02-21-2011
Job #14774 (Meter 1.57)

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Roll call vote on a BILL relating to reduction of the rate of the financial institutions tax and adjustment for the allocation of the tax

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee back to order in reference to SB 2320.

V. Chair Grindberg I just asked Sara for drafts of amendments. Senators O'Connell and Wardner have visited with Mr. Clayburgh and I can only tell you what I think we should do. My amendments would remove everything in the Bill except for the study that would study the current tax structure versus and blending it in with a corporate tax structure for the financial institutions. There was some comments that the committee was sensitive to that if the House passes corporate income tax and the Senate agrees to some corporate income tax reduction then the financial institutions should be treated likewise. That's still down the road, so looking at my sub-committee members we think maybe a study at this point would be sufficient.

Chairman Holmberg We also have in SB 2210 the opportunity for them to reduce their tax exposure by investing in that gap financing plan.

Senator Wardner I concur with V. Chair Grindberg.

V. Chair Grindberg The amendments are being ordered; It takes everything out of the Bill except leaves the study. If you wanted to act on that on a verbal we can do that.

Chairman Holmberg Anyone object to that. It's been explained.

V. Chair Grindberg moved the amendment. Seconded by Senator Wardner.

A Roll Call vote was taken on the amendment. Yea: 13, Nay: 0; Absent 0.

V. Chair Grindberg moved Do Pass as Amended. Seconded by Senator Wardner.

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent 0. Senator Wardner will carry the Bill. The hearing was closed on SB 2320.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2320

Page 1, line 1, remove "amend and reenact sections 57-35.3-03, 57-35.3-05, 57-35.3-07, and"

Page 1, remove line 2

Page 1, line 3, remove "institutions tax and adjustment of the allocation of the tax; to"

Page 1, line 4, remove "; and to provide an effective date"

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 10

Page 4, remove lines 17 and 18

Renumber accordingly

Date: 2-21-11
Roll Call Vote # 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendments coming for Study

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Grindberg Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-21-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Grindberg Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Wardner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2320, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2320 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "amend and reenact sections 57-35.3-03, 57-35.3-05, 57-35.3-07, and"

Page 1, remove line 2

Page 1, line 3, remove "institutions tax and adjustment of the allocation of the tax; to"

Page 1, line 4, remove "; and to provide an effective date"

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 10

Page 4, remove lines 17 and 18

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2320

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2320
March 21, 2011
#15722

☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill for an act to provide for a legislative management study.

Minutes:

See attached testimony #1.

Rick Clayburgh, President and CEO of the North Dakota Bankers Association: Introduced bill. Support. Senator Nodland is still in Dickinson this morning but has been following this bill. This bill deals with the financial institution tax and that is a tax paid by the banks in North Dakota. Banks do not pay a corporate income tax in this state; they pay a financial institution tax. Banks have been around since before statehood and in fact, the Bankers Association is four years older than the state of North Dakota. Banks have always been here and have always been active in the community. They've been involved in the start of the state and a start of the communities. At the time there used to be a business franchise tax and the banks were covered under that. Numbers of years ago it had broken off and there was the start of the corporate income tax in North Dakota. Because of the history and the length of time to the best of our knowledge banks were not pulled along with that change to the corporate income tax in state under a form of financial institution tax. There have been a number of changes in the tax over the years but the most significant change occurred back in the mid or early 90s when we changed the tax and created a distribution formula. Prior to that time banks filed their tax with the state and then the state certified their tax and then each bank paid a specific county in which they had business activity. With those changes in the 90s the banks still file a tax return to the state but based on that they pay all the money to the state and under a distribution formula those dollars are distributed to the cities and counties and a portion of it stays with the state. Banks pay a 7% income tax adjusted in the state and 2/7 of that tax goes to the state general fund and 5/7 of it goes to the distribution fund for the cities and counties. SB 2320 in its original form reduced the rate that banks would pay to 5%. It eliminated the state portion of the distribution tax and maintained the 5% that was going to the cities and counties. It eliminated the general fund portion of the bank tax and maintained and held the counties and cities harmless on the 5% that they were receiving from the tax. The fiscal note on that reduction was approximately \$8.4 million. The senate finance and tax committee reviewed the bill. They understood the need and reason for the banks coming forward and talking about the reduction in tax. The reason that we specifically looked at the state tax was in order to provide relief. We are not under the corporate system so whenever the legislature talks about a corporate tax relief the banks are not a part of that. Over the past 10 years a

number of opportunities that the state has reduced corporate income tax and the banks have not enjoyed that. We are coming forward and specifically saying that the time is right now for the banks to also be part of it, not only because we have been left out over the past number of years but also given the current environment that our banks are operating in here in North Dakota. As you know we just went through a very significant meltdown in our nation's economy and the evidence is very clear that the commercial banks in this country were not part of that meltdown. In fact, even President Obama said that 96% of all subprime lending occurred outside of traditional FDIC insured institutions. It was a shadow banking industry that caused the problems that led to our meltdown. The legislation that has come out of Washington and our over-reaction of our legislators have put significant burdens on those institutions that had nothing to do with the problems and really have not captured the shadow banking industry. Now our banks in North Dakota are under very significant pressures by the regulators and the changes in the legislation that is impacting their bottom line which impacts their ability to provide lending services to their communities. The senate finance and tax committee agreed with what we were doing but they thought the total reduction in the state's share and the fact that the state tax department still administered the tax and a full reduction didn't make sense in the light that the state still expends money in administering the tax so they reduced that rate from 7% to 6 ½% and that made the fiscal note \$2.125 million. The banks were supportive of that but it certainly wasn't what we were first intending but we were supporting the concept. The bill went to the senate appropriations committee and they stripped the full reduction and left the study. The study was an idea of Senator Cook to look at the financial institution tax and determine if it best served the cities and counties and the state of North Dakota as we made changes. At the time the committee didn't know what they would be doing as far as corporate and individual income taxes. I was told that if there is going to be corporate income tax the senate would be supportive of adding the banks back into it and they maintained 2320 as a vehicle to do that and send it over to the house. I'm standing in front of you today in support of 2320 and asking that you amend the bill and re-establish some level of tax relief to the financial institutions to the banks in this state. I can understand and I would be in agreement but maybe taking it from 7% to 5% is too much but I certainly believe that taking it from 7% to 6% makes a lot of sense and that would be roughly a \$4 million fiscal note to the state general fund and it would maintain about \$4 million to the state general fund as well in order to deal with the issues of the tax department and what they have to deal with. It also insures that the financial institutions in the state are going to enjoy something in the terms of tax relief that other business taxpayers will also receive. I think this is a good bill and we are in full support of it. This will send a good message to the banks of North Dakota who are good corporate citizens and who are good citizens in their communities and are very active in supporting their communities. This legislation will help show up our balance sheets as well as expand their lending in the state.

Representative Shirley Meyer: In your testimony you said 7% to 6 ½% and now asking for an amendment you said 7% to 6%. Is it 6% or 6 ½%?

Rick Clayburgh: We would be happy with 6% but we will take 6 ½%. I was suggesting what the senate did was lower it to 6 ½% and that's \$2 million and that is spreading that across our taxpayers in the state. On the fiscal note the financial institutions has their own line on it and the total state general fund projection for the next biennium is \$8.5 million which is down from about \$10-11 million that the state would get out of the financial

institution tax. The whole financial institution tax is close to \$20-22 million a biennium. Over the past 6-7 years the banks have put in over \$100,000,000 into the cities and counties in support of their local area. The senate said 6 ½% and we would support that but we think a better target is 6% or a \$4 million reduction. We will not be back next biennium asking for a further reduction.

Representative Dave Weiler: In comparing the financial institutions tax of 7% from a dollar standpoint how does that compare if the banks didn't pay that but they paid the corporate income tax?

Rick Clayburgh: You can't do apples to apples comparison because there are some adjustments on the bank return that don't occur on the corporate return. The banks still have the corporate income tax deduction which corporations no longer have in North Dakota. Just to say they are going to pay less or pay more I can't tell you. There are some more calculations that would have to occur. Probably for the S Corp. banks in the state they would pay less in tax if they converted to the corporate but the C Corps would probably pay a slight bit more at the 7% rate. I don't know what that would be if we took that to 6 ½ or 6%.

Vice Chairman Craig Headland: You mentioned that Senator Cook is in favor of the study. If the committee would choose to amend this bill to change the rate is there any need to continue on with the study?

Rick Clayburgh: From the standpoint of the study our interest is to provide tax relief to our financial institutions. In the reality of it to study it to say we should go to the corporate tax rate there are a lot more policy decisions in that than just saying we're going to change from a financial institution to a corporate rate. You also have the cities and counties that are going to be involved in that. If you change it to a corporate rate then the financial institution tax goes away and that source of funds to the cities and counties goes away and then the question to the legislature is if we hold them harmless and how would we adjust that. We're not here asking for that. I can see the rational for the study so the legislature can look at it as a policy decision. I think in simple terms if I were king for a day and we would support tax relief then I think a study is not as important. The reason I say that is our banks appreciate the fact that their dollars go directly to their cities and counties who they take a great deal of pride in.

Jack McDonald, Independent Community Banks of North Dakota: Support. One of the issues that is increasingly becoming a burden for the local banks are the regulations that Mr. Clayburgh talked about and sometimes to the point that the small banks are going out of business. We would echo what Mr. Clayburgh said in his testimony.

Representative Lonny B. Winrich: Do you have a position on the study?

Jack McDonald: We have not officially taken a position on it. I think that the study wouldn't hurt to take a look at the total structure but it depends on how this is going to come out at the end of the session and if there will be a change in the taxes.

Representative Wayne Trottier: What is the break down for the cities and counties?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Please refer to attached testimony #1. This page details how the money is distributed amongst the counties from the financial institutions tax fund which is the 5/7 portion of the tax.

Representative Lonny B. Winrich: In looking at the total amounts here under the financial institution tax and it says in 2008 \$6.5 million went to the counties and \$5.5 million went to the general fund. That doesn't seem like 2/7 and 5/7 breakdown.

Donnita Wald, General Counsel for Office of State Tax Commissioner: It was because of an audit that was conducted by the department.

Representative Lonny B. Winrich: Can you elaborate? I don't understand how an audit would make that much of a difference.

Mary Loftsgard, Associate Director of Tax Administration with the Office of the State Tax Commissioner: The reason that the numbers to the counties and the cities don't always come out to be 2/7 or 5/7 has to do with both audit results and refunds. The distribution fund is kind of an odd critter. Based on the statute we really can't refund out of the distribution fund we have to refund out of the general fund and then the distribution fund pays the general fund back with interest. Sometimes the money that comes out of the distribution fund to make up for the refunds and any interest paid makes it look like there is not an even distribution. The tax really was distributed on a 2/7 and 5/7 basis. In the years where it looks kind of odd is because of that funny funding mechanism of the distribution fund. When the tax return comes in it is split out 2/7 and 5/7 but when you do these accounting things to make sure you're accounting for audits and refunds that is what makes those numbers look goofy.

Representative Lonny B. Winrich: These are refunds to the financial institutions?

Mary Loftsgard: Yes those would be refunds to the financial institutions and that could occur again because of an audit. Also financial institutions like regular corporations are required and amend returns if they have changed their federal taxable income or federal tax liability. If they had a federal audit there might be a refund then they will claim that on the state basis.

Representative Dave Weiler: These distributions of financial institution tax are the percentages based on population or businesses within that county?

Mary Loftsgard: Those are fixed percentages. They were set in 1997 when we went from what used to be called the bank tax to the financial institution tax. As I recall those were based on an average of what each county had collected over a five year period. It was a look back to say this is what the counties had collected under the original bank tax as Mr. Clayburgh mentioned. In the days of the bank tax there were actually two taxes; a privilege tax that was a 2% that went to the state and a bank tax of 5% that went to the counties. The counties collected those themselves. When the financial institution tax came along in 1997 it was all rolled into a 7% tax on financial institution and the state now splits it 2% to

the general fund and 5% to the counties. The county distribution is set by statute; it does not change, based on that average of five year receipts from the bank tax.

Representative Dave Weiler: So because population trends change has there ever been any thought to the distribution tax again? I would think there are going to be some winners and losers if we keep it the same and there will be some winners and losers if we change it but if it's based on what it was based on in 1997 then wouldn't it be wise to look at changing that to reflect that?

Mary Loftsgard: One of the things I think would be precipitated in the financial institution tax was the change in how banks operated. Under the old bank tax banks weren't really doing interest aide banking they were kind of set in the county where they were located. Banks that operate worldwide like US Bank, Wells Fargo, etc. that are doing banking in all the states. That was part of the logic in doing this. In trying to keep the counties whole and make sure that they would continue to receive the amount they had before. To my knowledge there hasn't been since 1997 a legislative effort to look at those percentages to change them. The questions come up asking if there are mechanisms to do that and there is not. It would require new legislation to do that.

Representative Glen Froseth: I'm surprised the Association of Counties isn't watching this to see if a change is made because if we lower it to 6% their revenues are going to decrease also based on 2/7 and 5/7.

Mary Loftsgard: When the bill came in it asked for a rate reduction to 5% from 7% all of which would have gone to the counties. The counties wouldn't have lost any money at all. The state would no longer get any portion of the financial institutions tax although we would have administered it. As Mr. Clayburgh said in the senate they looked at the bill again and amended it to reduce the 2% of the state portion to 1 1/2 % but they would keep 5% for the counties so really under either bill the counties would be kept whole, they would get that same percentage whether it would work out to be the same in dollars it would depend on how much taxable income the banks have.

Representative Steven L. Zaiser: I still don't think you've answered Representative Weiler's question as to why we haven't changed some of these formulas and we've maintained somewhat of an archaic formula.

Mary Loftsgard: Nobody has ever asked. It's not in the privy of the tax department to do that, it is something that would have to come from the legislature.

Representative Wayne Trottier: Are the counties directed or mandated on what goes out to the cities depending on the number of banks or profits to the banks?

Mary Loftsgard: I'm not as familiar with distribution once it gets to the counties.

Rick Clayburgh: It was pre-established.

Vice Chairman Craig Headland: No further testimony. Closed hearing on SB 2320.

Vice Chairman Craig Headland: Let's have discussion on the bill we just heard, 2320.

Representative Mark S. Owens: What I heard was that it had been amended to a study because the senate wasn't considering any corporate tax break and now it sounds like they are so I would be supportive of getting an amendment to change this. I'm thinking more of a half percent just to give them a little relief because like it was stated we have done some corporate things in recent years and since they are not under the corporate tax they haven't benefited from it. I would be supportive of leaving the study in based on what we heard about the counties using the old banking tax and using the five year average to determine the distribution to counties. Life changes but in order to change it now we don't have the banking tax to fall back on for the recent years so there would have to be something else used to create a new formula for distribution. I'm interested in getting an amendment to add the $\frac{1}{2}$ % back in and hold the counties harmless by taking the $\frac{1}{2}$ % out of the state's portion. My intent would be to put the $\frac{1}{2}$ % back in and to leave the study on.

Vice Chairman Craig Headland: If the committee would pass the amendment Representative Owens just talked about would this fiscal note of \$2.125 million reflect that?

Donnita Wald, General Counsel for Office of State Tax Commissioner: Yes.

Vice Chairman Craig Headland: Does everybody understand it?

Representative Shirley Meyer: So we're going to be dropping it from 7% to 6 $\frac{1}{2}$ %?

Representative Mark S. Owens: Yes, that is correct. That $\frac{1}{2}$ % would be out of the 2/7 going to the state.

Vice Chairman Craig Headland: It goes back to the senate amended tax committee version.

Representative Dave Weiler: It goes back to the original bill the way it first came to the senate.

Vice Chairman Craig Headland: Representative Owens, go ahead and have that amendment drafted and we can discuss it later.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2320
March 22, 2011
#15805

☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill for an act to provide for a legislative management study.

Minutes:

See attached amendments.

Representative Mark S. Owens: Distributed and reviewed amendments. Please refer to attached amendments. This amendment shows the 7% is dropped to 6 ½% and in section 2-4 is designed to ensure that it comes out of the state's portion which is the 2/7 and not the 5/7 of the tax that goes to counties and cities. It still leaves the study on the bill.

Representative Shirley Meyer: And the fiscal note is?

Representative Mark S. Owens: I believe it is \$2.125 million.

Representative Lonny B. Winrich: I don't understand how we get to \$2.125 million. The data that was given to us yesterday was taken from the red book and it stated that in 2007 \$5.4 million was deposited in the general fund and in 2008 there was \$5.5 million. It looks to me like the reduction for a biennium would be about \$11 million.

Vice Chairman Craig Headland: I have a fiscal note that states it is moved from 2% to 1 ½% and reduces general fund revenues by \$2.125 million.

Representative Dwight Wrangham: Was there a study in the original bill? It appears to me that the study is removed by the amendment.

Representative Mark S. Owens: The intent was that the study was not to be removed. It doesn't appear to be removed to me unless I'm missing something here.

Vice Chairman Craig Headland: The second paragraph on page 1 line 1 after "study" insert "to provide effective date" does that keep the study in?

Representative Dave Weiler: It's just the title.

Representative Lonny B. Winrich: The study is still on.

Representative Mark S. Owens: The study is still in the bill.

Representative Lonny B. Winrich: I have a note from Cathy Strombeck that says if the financial institutions tax drops from 7% to 6.5% and if we're going to keep the proportions the same and so on that means that the counties would receive five 6.5% which is a really strange fraction but it is computable. Her suggestion is that counties receive 76.9% of the total which would be the same but it would be a little clearer in the law.

Vice Chairman Craig Headland: I thought I understood by this amendment that the counties were held harmless?

Representative Lonny B. Winrich: They are but this would be a better way to say it. 10/13 is the same as 5/6.5.

Representative Dave Weiler: That would be equivalent to Representative Winrich's and my thinking of 5 out of 6.5%.

Representative Shirley Meyer: Do you want to amend the language so that it's more computable?

Representative Mark S. Owens: This is from John Walstad and I just learned about it in committee. I thought the amendment or the 6 ½% would have been a lot smaller than this and it obviously wasn't.

Representative Lonny B. Winrich: It works the way it is written.

Representative Mark S. Owens: I'd like to move the amendment 03001.

Representative Patrick Hatlestad: Seconded.

Representative Dwight Wrangham: Does anyone have an idea of how much this is going to cost the general fund above and beyond the reduction of a ½%? In other words, we are going to reduce the share that the state keeps by ½% but we are also going to dig into the general fund to make the counties and cities whole. Do we know what that amount is?

Representative Mark S. Owens: We're not digging into the general fund to make them whole. The money from this tax is already divided currently with 2/7 going to the general fund and 5/7 goes to the counties. We are going to reduce the overall tax by ½% and all we're saying is that ½% comes out of the state's half. So nothing changes with the counties and nothing comes out of the state general fund for the counties it's just that the amount going to the general fund shrinks by the total amount we're reducing which is estimated by the tax department on the fiscal note to be \$2.125 million.

Representative Dwight Wrangham: So the part that goes to the counties would be 7%?

Representative Mark S. Owens: It was 5% of the 7% and it is still 5%.

Representative Dwight Wrangham: You see there's some double math here somewhere but I can't see the amount. If there is a reduction in the amount coming to the state but there's not a reduction in the amount going to the cities someplace there is an extra reduction.

Representative Mark S. Owens: Let me put it this way, think of it as two taxes; the counties charge financial institutions 5% tax and the state charges financial institutions 2% tax. We're going to reduce the state's 2% to 1 ½% but the counties and cities taxes don't change.

Representative Dwight Wrangham: Now I understand.

Vice Chairman Craig Headland: A voice vote was taken to adopt amendment:
MOTION CARRIED.

Vice Chairman Craig Headland: We have the amended bill.

Representative Patrick Hatlestad: I recommend a DO PASS AS AMENDED.

Representative Roscoe Streyle: Seconded.

Representative Dave Weiler: I somewhat hesitate to speak to oppose a tax cut but it seems that now we've reduced everybody's taxes that have come in to ask for it this session except one. Thank you.

Representative Mark S. Owens: It was interesting as I remember a discussion that these people weren't covered under corporate tax and they deserve a tax reduction because we've been reducing corporate and they never received a corporate tax reduction. That's the only reason I went after this was because I agreed with that logic.

Representative Wayne Trottier: I am also going to vote no and I justify to myself that the oil people are struggling and not getting a tax breaks because they are still plowing in here and drilling for oil everyday with new ones coming in so why should we lower that. Banks are expanding all over the place, there's getting to be a bank on every corner. I don't think most of them are hurting and here we're going to give them a break. We don't even know if it's going to be a real break until there is a study done because they said they don't know how the tax structure will fit here.

Representative Glen Froseth: I'll support this tax reduction as I have supported most reductions. It is different from the oil taxes. Oil companies are coming in using our infrastructure that we have built up for however many years North Dakota has been in existence. I think that they are willing to accept the fact that they have to help pay for rebuilding the infrastructure and maintain it so they can continue to use it. Taxpayers of North Dakota have built this state for many years and all these oil companies are out of state and using those facilities. I think we have built a great state and I think we are inviting them to come in and use our infrastructure that we have paid for and built. I think that's the difference between one tax reduction and another type of tax reduction. Also we've

reduced taxes on everything but one industry. We can reduce taxes \$2.8 million here or \$2.1 million there but we have a hard time increasing our revenues back to the people that built this country and help pay for that infrastructure that we have here now. I'll support this but I'm also going to fight for that senior mill levy match bill when that comes back again.

**A roll call vote was taken on a DO PASS AS AMENDED: YES 8 NO 5 ABSENT 1
MOTION PASSED.**

Representative Mark S. Owens will carry SB 2320.

VK
3/22/11
1083

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2320

Page 1, line 1, after "Act" insert "to amend and reenact sections 57-35.3-03, 57-35.3-05, 57-35.3-07, and 57-35.3-08 of the North Dakota Century Code, relating to reduction of the rate of the financial institutions tax and adjustment of the allocation of the tax;"

Page 1, line 1, after "study" insert "; and to provide an effective date"

Page 1, after line 2, insert:

"SECTION 1. AMENDMENT. Section 57-35.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-03. Imposition and basis of tax.

An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is sevensix and one-half percent of taxable income, but the amount of tax may not be less than fifty dollars.

SECTION 2. AMENDMENT. Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subdivision for any taxable year may not exceed five and seven-tenths ~~four and six-tenths~~ percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed five and seven-tenths ~~four and six-tenths~~ percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a

regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.

- d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.
2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
 - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
 - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven-tenths~~ four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

SECTION 3. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

~~Two-sevenths~~Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. ~~Five-sevenths~~Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

SECTION 4. AMENDMENT. Section 57-35.3-08 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-08. Disposition of tax.

The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, ~~which is hereby created~~. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund."

Page 1, after line 8, insert:

"SECTION 6. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective for taxable years beginning after December 31, 2010."

Renumber accordingly

Date: 3-22-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

03001

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOICE VOTE

MOTION CARRIED.

Date: 3-22-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2320

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	☒	☒	Scot Kelsh	☒	☒
Vice Chair. Craig Headland	☒		Shirley Meyer	☒	
Glen Froseth	☒		Lonny B. Winrich		☒
Bette Grande	☒		Steven L. Zaiser		☒
Patrick Hatlestad	☒				
Mark S. Owens	☒				
Roscoe Streyle	☒				
Wayne Trottier		☒			
Dave Weiler		☒			
Dwight Wrangham	☒				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Owens

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2320, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2320 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to amend and reenact sections 57-35.3-03, 57-35.3-05, 57-35.3-07, and 57-35.3-08 of the North Dakota Century Code, relating to reduction of the rate of the financial institutions tax and adjustment of the allocation of the tax;"

Page 1, line 1, after "study" insert "; and to provide an effective date"

Page 1, after line 2, insert:

"SECTION 1. AMENDMENT. Section 57-35.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-03. Imposition and basis of tax.

An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is ~~sevensix and one-half~~ percent of taxable income, but the amount of tax may not be less than fifty dollars.

SECTION 2. AMENDMENT. Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
- c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a

nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.

- d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.
2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
 - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
 - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.
3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven-tenths~~four and six-tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

SECTION 3. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

~~Two-sevenths~~Three-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the

return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. ~~Five-sevenths~~ Ten-thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

SECTION 4. AMENDMENT. Section 57-35.3-08 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-08. Disposition of tax.

The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, ~~which is hereby created~~. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund."

Page 1, after line 8, insert:

"SECTION 6. EFFECTIVE DATE. Sections 1 through 4 of this Act are effective for taxable years beginning after December 31, 2010."

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2320

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
4/11/2011
Job Number 16465

☒ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Conference Committee

Senator Oehlke opened discussion on SB 2320.

Representative Owens – What we did was amended the bill to look as it came out of Senate Finance and Tax and we left the study on. We would like to understand the objections.

Senator Miller – The bill, it has about a \$2 million fiscal note, cuts from 7% to 6.5% so there isn't a whole lot of wiggle room there to adjust the rate anymore. We are either going to cut it or we are not. Obviously we attempted to pass this as it was on the floor of the Senate and that failed. We are down to the end here and we've got to make a budget here and people are getting concerned about where money is going and where it's coming from. We like the study though, that is an important component we need to examine how this tax reflects within our corporate tax as it is somewhat different, largely higher. I think that is the Senate's position.

Representative Owens – I agree with you that the study is necessary and we also realize that there is certain differences in the financial institution tax whereby rebates are routinely provided based on certain criteria and I don't know all the in's and out's there and that is why the study looked good to us, but we don't understand why after all this time, and we've ignored them, we've ignored the financial institutions as far as providing them a little relief associated with this, particularly now that we've had increased regulations for both banking and credit unions at no fault of the independent credit unions and independent bankers. They weren't responsible for the so called bust and bubble and that's a large number of the banks here in North Dakota. The large majority that this would help are those community banks and those community credit unions. This is more so the community banks, it's not going to help credit unions, they aren't taxed, but still, it levels the playing field just a tad.

Senator Miller – This is fairly cut and dry, it's to the point now where its either we have some sort of study or we don't have a study because I think the Senates position is pretty

clear and this is either pass or fail. Pass is with the study on it, doesn't pass if it's got the tax cut on it. We probably, if we want to cut taxes for the banks, it seems like it's more than preference to go about it in a comprehensive mode and maybe we get something we can amend on to a separate bill that has tax cuts for corporate and individuals if that is something we want to do so that the numbers are known and transparent as to how much tax cuts we are actually delivering. At this point I guess I would recommend the House recede from its amendments and adopt the study.

Representative Owens – I'm not prepared to do that right now but basically what you've said is that you won't entertain anything else, so it does sound like we are dead in the water.

Senator Triplett – I'd like to know from the House side what other possibilities you think there are other than sort of one or the other because as Senator Miller mentioned, it's kind of a tight margin already in terms of splitting the difference so is that what you would consider?

Representative Owens – Well that's what we thought we were doing in the first place. I mean we realize that we only kept it at a half a percent and we like the study so that we can go ahead and recognize the contribution and everything. Senator Miller mentioned a comprehensive tax reduction where it was more transparent. I don't know how transparent you get; this is a half a percent. It's pretty transparent right now and we know how much a half a percent is based on historical evidence. There are corporate structures outside of the banks that they are all being forced to pay into out of their margin. So they are getting fewer margins than they were before and this is not their fault. This is the corporate banks that got into that bubble and did all that stuff that they weren't suppose to do and now they are being forced to pay for it. That on top of the tightening regulations, they were asking for a little assistance just like, no different than the gaming tax and the charitable organizations, and some of those organizations aren't even charitable, they are CVB's, but never the less, they are asking for their gaming tax to be reduced. It's the same situation, that certain things in the environment and in the business climate have changed and they are asking for a little assistance. We thought that's where the study came in handy. We can give them a half a percent now and then we get the study and then we really understand where they stand in relationship to the corporate. I don't see Senator Miller adding anything in to the other tax cuts right now based on transparency. I don't have a problem with doing it; I just don't see that flying either because the argument is still the same. If you don't like it here they aren't going to like it there.

Senator Triplett – One of the issues that I have with this is you made the comparison to gaming. I think we did hear from the gaming folks pretty clearly that if we dropped the tax that the difference would go directly into the charities that they support and so it was a clear direction for the money. We chose not to take so much in tax dollars and they made a commitment that their administration wasn't going to increase, there certainly isn't a profit motive there, and so the difference then was it was just being redirected into the purpose of the organization which is charitable gifting. I asked a similar question in the hearing if we dropped this tax whether the money would circulate more in the local communities and whether people would benefit and it was actually a statement that Mr. Clayburgh had made and I asked if there was any guarantee that they could provide that the communities would

benefit as opposed to banks just having a higher profit margin and he sort of said he hoped it would happen but there wasn't any way of guaranteeing it. Then I asked him a longer more philosophical question about what North Dakota's bankers were doing about contributing to solving the housing crisis we have in western North Dakota and I do fault the banks for being incredibly conservative on this and even without regard to the additional regulation that is out there. Again he responded to that but not with anything that was really very satisfactory about any assurances that the banks were dealing with it and it seems to me that what's going on out there is that the banks have been slow to get on board with the housing crisis and that because they apparently don't have a comfort level with the notion that this is a longer term oil plague going on that what they are doing is demanding very short term pay backs on mortgage loans for apartment housing and that sort of thing and so they are participating in driving the rents up enormously in western North Dakota because the rents have to be set very high in order to make the mortgage payments because they are on such a short time line like 7 years instead of 15 years or something like that. That is my concern is that we are proposing to give a tax break to the banks and yet no assurance that it's going to benefit the community or the state of North Dakota in any way and I don't really see the banks stepping up to help solve the problem of housing that really exists right now.

Representative Streyle – I think what we have seen with tax cuts is it creates economic growth and you end up getting that money back so to address that it will certainly come back to the state. Banks aren't going to hold this money, it's going to be used to lend out, hire additional staff, increased regulation costs are through the roof, and as far as to assert that the banks are causing the rent problem I find extremely troubling. It's a free market; banks are under federal regulations, state regulations, etc. Many banks are doing loans out in western North Dakota. A lot of it has to do with appraisals and not being able to get the appraisal to be where it needs to be to do the loan. What happens is the borrowers come in and pledge more collateral or bring more money to the table and in no way are banks liable for increased rents. It's a free market; the banks don't control the rental market. Yes the rents are going up but it's simply a supply and demand and when the construction industry catches up with that demand we won't be having this argument.

Representative Owens – Senator Triplett I appreciate your concern particularly out west and about housing, that's not unfamiliar to all of us. While I do agree that supply and demand is causing the rent to go up and all banks got very conservative after the explosion. There usually is a 5-7 year balloon loan in commercial where you do it for 5 or 7 and then at the end you refinance that again, and that really, I don't blame them for looking at history. The banks themselves are not going to solve the housing problem by themselves.

Senator Oehlke – Your last 2 sentences made me think maybe a study really is a darn good idea.

Representative Owens – I said we liked the study but we don't think it independent of, by its self is reasonable.

Senator Miller – The simple fact is this committee, Senate Finance and Tax passed this bill out as it currently sits. This is what we passed. It went to Appropriations in the Senate

and they didn't like that and they amended it to a study. Then the bill came back from the House in the condition as it left this committee, we agreed to that, it went on the floor, and then the Senate didn't like that. Right now we have really no possibility of amending this bill. There is nothing we can change so we either decide are we going to recede to the Senate or accede to the House.

Representative Owens – I am not so inclined so if someone would like to make a motion to either accede to the Senate or recede from the House or whatever and we get a second then we can just vote on it and we can put an end to this.

Senator Miller – I would also like to add if this comes back to the Senate floor as it sits, we are going to probably kill the bill and we can maybe try and amend it on to the income tax bills, at least the study, or we can send it back to the House and pass the study out and make sure we get that done. So, I would move that the House recede from its amendments and adopt the Senate version.

Seconded by **Representative Zaiser**.

Senator Miller – I think this is the quickest way to expedite this and make sure we pass the study. Maybe we can talk about bank tax cuts on the income tax bills and maybe put something on there and that's what I was talking about transparency at least for the appropriation.

Representative Streyle – From what I have heard in some discussions it was basically killed on the Senate floor because they wanted to see what the final package was and then maybe look at it again but the Senate as a majority vote wasn't comfortable passing it without knowing what the exact package was. Is that accurate?

Senator Oehlke – I wish I could remember for sure what that part of the discussion was. The banking problem has more to do with than just loans and it has more to do with than just taxes too. They have more problems than just what the taxes are. That is why the study itself is so incredibly important. At the same time I don't know how much goes back to, it's a percentage of what they paid, how this tax credit would go back to them and it might make us feel good to give back \$2 million but whether it really makes a dent for anyone significantly we'd be better off putting that money into corporate tax returns or something probably.

Representative Zaiser – Just to comment from the House perspective, and this question I guess would be submitted for anyone to answer. First is a statement, I should say that there have been other folks out there that haven't benefitted from the positive economic conditions we are in, in the state. Those folks on the lower social economic strata haven't really been given a specific targeted tax break. The question I have for everybody and I understand the desire and the wish and the fairness issue in providing a tax break for the banks, my question is, is this really going to be a hardship if we can show that in the study that there should be a greater tax break or the taxes should be reduced for banks in this study?

Representative Streyle – If you put \$1 million back in capital that would leverage \$10 million in loans so if we want to lend more or allow banks to lend more, giving them more of their money back even if they leave it in capital will allow them to lend out more. I don't see the harm I guess, if you do \$2 million, figure some gets spend on regulatory, say \$15 million more in capital you could leverage that \$2 million so I think this could potentially increase lending, not by dramatic amounts, but I could see it easily at \$10 million which could help solve some problems.

Senator Oehlke – We have a motion and a second before us that the House recedes from its amendments. Ask the clerk to take the roll. (3-3-0) Motion failed.

Representative Owens – My concern is from everything that I if we come back with just the study it's dead anyway in the House. It wasn't just me; I want to be clear on that, it's going to die. That's what I believe. Do I know that for a fact? No, not until we have a vote, but that is what I believe based on all the conversations.

Senator Triplett – Can you explain to me if the House believes there is a need for a tax decrease but the Senate refuses to agree with it now but is willing to say we'll study the issue for the future along with a good number of other issues what would be the reason the House would choose to reject the study if it would get you to the result you want possibly in 2 years?

Representative Owens – They believe that because it's been overlooked and when I say they it's just pockets of groups of Representatives, I haven't talked to every single one of them, but they believe it's been overlooked for so long that a little half a percent is not too much to ask for. Based on that conversation I believe that they would just kill it. Again, I could be wrong.

Senator Oehlke closed discussion on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
4/15/2011
Job Number 16627

☒ Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Conference Committee

Senator Oehlke opened discussion on SB 2320.

Senator Oehlke – One of the things that is transpiring right now is a committee hearing on HB 1289 and I know, and you maybe are aware too, I saw briefly yesterday an amendment that was going to be proposed on HB 1289 addressing not only this tax but also personal and corporate and I think there is a real effort to get all those things into one bill. I'm not sure how long you want to visit on this particular bill unless we had some meaningful things that maybe could be shared with that committee too.

Representative Owens – I don't disagree with you. I was aware of what was being considered. By that I would recommend that we adjourn and if we want to go ahead and schedule another meeting we at least schedule for Tuesday afternoon maybe and wait and see if we have any movement on anything.

Senator Oehlke closed discussion on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
4/19/2011
Job Number 16752

☒ Conference Committee

Committee Clerk Signature

A. R. Hm. Kew

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Conference Committee

Senator Oehlke opened discussion on SB 2320.

Senator Oehlke asked if the committee still felt they should hold off until something happens with HB 1289, everyone agreed.

Senator Oehlke closed discussion on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
4/21/2011
Job Number 16811

☒ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Conference Committee

Senator Oehlke opened discussion on SB 2320.

Senator Oehlke – We still don't know a whole lot about HB 1047. With that we will adjourn.

Senator Oehlke closed discussion on SB 2320.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2320
4/22/2011
Job Number 16847

☒ Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the rate of the financial institutions tax and elimination of the allocation of the tax to the state general fund

Minutes:

Conference Committee

Senator Oehlke opened discussion on SB 2320.

Senator Miller – I move that we accede to the House amendments.

Seconded by **Representative Owens**.

Senator Oehlke – Ask the clerk to take the roll. (5-0-1)

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance and Taxation

Bill/Resolution No. SB 2320 as (re) engrossed

Date: 4-22-11

Roll Call Vote #: 1

Action Taken

- ☒ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 1026 - 1028

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2320 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Miller Seconded by: Senator Owens

Senators							Yes	No		Representatives							Yes	No
Senator Oehlke	xx	xx	x	X						Representative Owens	xxx	xx	X	X			X	
Senator Miller	xx	xx	x	X						Representative Streyle	xxx	xx	x	X			X	
Senator Triplett	xx	xx	x	X						Representative Zeiser	xx	xx	x	X				

Vote Count: Yes 5 No 0 Absent 1

Senate Carrier Senator Oehlke House Carrier Representative Owens

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2320, as reengrossed: Your conference committee (Sens. Oehlke, Miller, Triplett and Reps. Owens, Streyle, Zaiser) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1026-1028 and place SB 2320 on the Seventh order.

Reengrossed SB 2320 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2320

Table CB01
Federal Deposit Insurance Corporation
Number of Institutions, Branches and Total Offices
FDIC-Insured Commercial Banks
North Dakota
 Balances at Year End, 1966 - 2009

Year	Institutions	Branches	Offices
2009	92	329	421
2008	94	326	420
2007	95	319	414
2006	93	317	410
2005	96	304	400
2004	100	301	401
2003	101	289	390
2002	104	285	389
2001	104	284	388
2000	110	278	388
1999	114	269	383
1998	114	265	379
1997	117	254	371
1996	123	211	334
1995	127	199	326
1994	139	189	328
1993	141	179	320
1992	143	169	312
1991	146	163	309
1990	150	160	310
1989	158	144	302
1988	159	143	302
1987	174	130	304
1986	176	129	305
1985	177	128	305
1984	177	128	305
1983	177	124	301
1982	176	122	298
1981	175	137	312
1980	175	128	303
1979	172	123	295
1978	171	117	288
1977	170	106	276
1976	169	90	259
1975	169	85	254
1974	168	78	246
1973	167	72	239
1972	167	71	238
1971	166	70	236
1970	166	69	235
1969	166	66	232
1968	166	67	233
1967	166	62	228
1966	164	59	223

2003 Session.

- Financial institutions tax changed to maintain the deduction for federal income taxes paid. The deduction had previously been allowed by reference to the income tax law. The change was necessary because the deduction was repealed for income tax.
- For tax years after December 31, 1999, the exclusion for the North Dakota domestic dividend was repealed based on a North Dakota Supreme Court ruling.

2005 Session.

- A new financial institution tax credit was created for making a contribution to fund a tuition scholarship for participation in the Rural Leadership North Dakota program conducted through the North Dakota State University Extension Service.

- Financial institutions that are members of a unitary group, and conduct 100% of their business in North Dakota were required to file a combined report.

2007 Session.

- Changes were made to filing requirements for "short period" returns, i.e., returns filed for a tax year that is less than 12 months. Such returns must be filed by the later of April 15, or the due date prescribed by the IRS.

2009 Session.

- The only change enacted to the financial institution tax law was to eliminate obsolete references.

Financial Institution Tax*

<u>Tax Year</u>	<u>Total</u>	<u>To Counties</u>	<u>To General Fund</u>
2000	10,800,647	7,714,748	3,085,899
2001	10,195,583	6,152,158	4,043,425
2002	10,627,138	6,808,992	3,818,146
2003	10,241,423	7,135,229	3,106,194
2004	9,690,881	6,830,163	2,860,718
2005	15,587,316	10,005,681	5,581,635
2006	18,575,329	12,558,064	6,017,265
2007	18,324,871	12,931,382	5,393,489
2008	12,083,480	6,535,072	5,548,408

- * The tax year 2009 collections are not final at the time of printing this publication.

In general, the tax liability of the financial institution is determined by multiplying North Dakota taxable income by 7%. This amount, which may not be less than \$50.00, is divided between the state general fund and the financial institution tax distribution fund. The general fund receives 2/7 of the tax, while the financial institution tax distribution fund receives 5/7 of the tax.

The tax collected in the financial institution tax distribution fund is distributed to the counties on or before March 1 each year.

Distribution of Financial Institution Tax*

<u>County</u>	<u>Percentage</u>	<u>County</u>	<u>Percentage</u>	<u>County</u>	<u>Percentage</u>
Adams	0.2968%	Grant	0.3913%	Ramsey	2.5621%
Barnes	2.2119%	Griggs	0.9247%	Ransom	1.3457%
Benson	0.3919%	Hettinger	0.5873%	Renville	0.3585%
Billings	0.0310%	Kidder	0.4219%	Richland	2.7733%
Bottineau	1.8718%	LaMoure	0.7904%	Rolette	1.0018%
Bowman	1.1325%	Logan	0.7964%	Sargent	1.3122%
Burke	0.4819%	McHenry	0.5434%	Sheridan	0.2813%
Burleigh	6.0739%	McIntosh	1.1903%	Sioux	0.0054%
Cass	19.2636%	McKenzie	1.1826%	Stark	4.2348%
Cavalier	1.6172%	McLean	1.3533%	Steele	0.5824%
Dickey	0.9295%	Mercer	1.3538%	Stutsman	3.4793%
Divide	0.8446%	Morton	2.1364%	Towner	0.5375%
Dunn	0.4347%	Mountrail	1.7976%	Traill	0.9871%
Eddy	0.1709%	Nelson	1.0597%	Walsh	2.5128%
Emmons	1.2017%	Oliver	0.1855%	Ward	7.5118%
Foster	0.9723%	Pembina	2.1623%	Wells	1.3501%
Golden Valley	0.5355%	Pierce	1.0727%	Williams	4.0541%
Grand Forks	8.6988%				

- * Money in the Financial Institution Tax Distribution Fund is divided among the counties based on these percentages.



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

Memorandum

To: Representative Wayne Trottier
House Finance and Taxation Committee

From: Mary Loftsgard
Associate Director, Tax Administration

Date: March 21, 2011

Subject: Senate Bill 2320

This morning during the House Finance and Taxation Committee hearing on SB2320, you inquired how counties distribute the funds they receive from the financial institution tax. That distribution mechanism is found in North Dakota Century Code § 57-35.3-09(3), and is similar to the way the financial institution tax is distributed to the counties.

The counties distribute the financial institutions tax to the various political subdivisions based on an average of the distributions to those subdivisions for years 1994 through 1998 under the former bank, trust, and building and loan association taxes collected under N.D.C.C. Chapters 57-35 and 57-35.1. Both of these chapters were repealed and replaced by the Financial Institutions Tax, N.D.C.C. Chapter 57-35.3 in 1997.

If there are additional questions, please contact me by phone at 328-2045 or email at mloftsgard@nd.gov.